PROGRESS AND CHALLENGES:

VIEWPOINTS ON THE TRIAL COURT'S RESPONSE TO DOMESTIC VIOLENCE

REPORT OF THE DOMESTIC VIOLENCE COURT ASSESSMENT PROJECT
ADMINISTRATIVE OFFICE OF THE TRIAL COURT

AUGUST 2003

This project was supported by Grant 2002-WFBX-0024 awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice to the Massachusetts Executive Office of Public Safety Programs Division and subgranted to the Administrative Office of the Trial Court. Points of view in this document are those of the author and assessment participants and do not necessarily represent the official position or policies of the U.S. Department of Justice or the Massachusetts Executive Office of Public Safety Programs Division.

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INTRODUCTION

Following is the report of the Domestic Violence Court Assessment Project. Approximately 500 people gave the court feedback on their experiences in the court, addressing both where court personnel and procedures for handling cases of domestic violence work well and where they need improvement. The general format of the report follows the court process from the moment an individual comes to court to seek protection, through hearings on complaints for protection from abuse, domestic relations actions and criminal cases. It is a detailed account, in many cases addressing the nuts and bolts of the workings of the court.

BACKGROUND

Over the past fifteen years, the Trial Court of Massachusetts has made a serious commitment to effectively address the many complex and sensitive issues which arise in cases which involve domestic violence. Beginning with the Massachusetts Gender Bias Study, a number of policy recommendations have been proposed and acted upon. These have included extensive training programs on domestic violence for judges and court personnel, the expansion of the Judicial Response System which provides litigants access to judges for emergency orders during nighttime, holiday, and weekend hours, creation of a Statewide Registry of Civil Restraining Orders, the publication of the *Court Assessment Project Final Report & Design, Recommendations for Victim/Witness Waiting Areas,* and the issuance of the *Guidelines for Judicial Practice: Abuse Prevention Proceedings*.

DOMESTIC VIOLENCE COURT ASSESSMENT PROJECT. Every year the federal government provides funding to the states under the Violence Against Women Act (V.A.W.A.). Known as Services-Training-Officers-Prosecutors Grants (S.T.O.P) and apportioned among law enforcement, prosecutors and victim services providers, these funds are intended to improve the response of the justice system to cases of violence against women. Beginning in 2001, V.A.W.A. mandates that a small portion of these funds be dedicated to programs benefitting the state trial courts. Thus in 2001, the Administrative Office of the Trial Court proposed and received a S.T.O.P. grant to establish the

Domestic Violence Court Assessment Project to conduct a comprehensive statewide assessment of how the Massachusetts court system is currently handling both civil and criminal cases which involve domestic violence. The goals of this Project have been to obtain feedback on the effectiveness of the initiatives that the Trial Court has already undertaken in this area, to identify areas for improvement, to discover best court practices which can be replicated in the processing of domestic violence cases, and to gain a picture of how a broad range of people perceive how the courts are handling cases of domestic violence. The Project will also assist the Trial Court in setting future program priorities. It is anticipated that the Project findings set out in this report will form a basis for the Trial Court to develop specific recommendations in the areas identified as needing improvement and an implementation plan for those recommendations**.**

SCOPE OF PROJECT. The Project looked at the major types of court hearings in which domestic violence is or can be a factor. These are primarily the filing of complaints for protection against abuse (M.G.L. c. 209A); domestic relations matters in which domestic violence is an issue (such as complaints for divorce, separate support, paternity, custody or support); and criminal proceedings resulting from violations of 209A restraining orders. Due to time constraints, other types of court actions in which domestic violence can be a factor, such as Juvenile and Housing Court matters, could not be examined in depth. These areas warrant further examination.

PROJECT ADVISORY COMMITTEE. A multi-disciplinary Advisory Committee representing the major constituencies involved with the courts in domestic violence cases provided invaluable guidance throughout the Project. Members included court personnel and representatives from the many state agencies which address issues of domestic violence, including the Department of Public Health, the Massachusetts District Attorneys Association, the Executive Office of Public Safety, the Massachusetts Office of Victim Assistance, and the Committee for Public Counsel Services. Please see Appendix p. 1 for a complete list of the Advisory Committee members.

METHODOLOGY. The assessment was conducted through surveys, interviews and focus groups with the major constituencies involved in domestic violence cases in the Trial Court. These constituencies included judges, court clerks,

registers, assistant clerks and assistant registers, counter staff, probation officers, litigants, police, prosecutors, public and private attorneys (both civil and criminal), victim services programs, batterers' intervention programs, guardians ad litem, and supervised visitation programs.

The Project Coordinator first conducted a series of interviews with key informants to develop a framework of the important issues to be explored in focus groups and in further interviews. By the end of the assessment she had completed 28 focus groups and over 50 interviews. To maximize participation in the assessment and to reach a diverse group of people with significant involvement in the issue of the court's handling of cases involving domestic violence, the majority of focus groups consisted of groups already meeting on the issue. These included domestic violence roundtables, coalition meetings, and regularly scheduled staff or committee meetings. To cover certain areas where an ongoing group was not available, one-time focus groups were assembled. Some of the focus groups consisted of people with similar roles, such as SAFEPLAN advocates, judges, or criminal defense attorneys. Other focus groups were multi-disciplinary, such as domestic violence roundtables that included advocates, court staff, and members of law enforcement. Please see Appendix pp. 2-4 for a complete list of interviews and focus groups.

To further maximize participation and to also reach litigants who were difficult to access through focus groups, the Project Coordinator developed and distributed two short surveys. Seventy-three surveys were returned. The surveys and a description of method of distribution can be found at Appendix pp. 9-13.

Including interviews, focus groups and surveys, over five hundred individual contacts were made. In addition, the Project Coordinator obtained information by attending trainings, workshops, conferences, and other meetings and reviewing written materials. Please see Appendix pp. 2-4 for a complete list of events attended and materials reviewed.

PARTICIPATION. It is important to highlight that virtually everyone approached was eager and enthusiastic to participate in the Project. People were extremely interested in discussing the issue of the court's handling of cases involving domestic violence. Every judge, administrative staffer, assistant clerk and register, and probation officer approached willingly made the time to

participate. Even currently over-burdened court personnel, particularly counter staff operating in understaffed courts, made special efforts to attend focus groups. It was clear that those involved in the court system take domestic violence very seriously and are deeply committed to addressing the issue as comprehensively as possible.

PERCEPTION AND EXPERIENCE. The information included in these findings is derived from the statements made by and information proffered by the participants in interviews, focus groups, responses to surveys, and during trainings, meetings and conferences. All study participants brought their own perspective, informed by their role, their experiences, and the courts with which they are involved.

There is an inherent struggle in the study of how an institution conducts its work: should it be based on the review of the institution's records and other hard data or on the reports of the experiences of the parties who interact with the institution? The current assessment relies on the latter.

Court records and other documentation are useful because they offer evidence of actual results of cases and a comprehensive picture of the materials provided to the court in those cases. Studies based on such data have been very useful for setting policy**.** However, in the current instance of a year-long project, it was clear that the enormous resources necessary to conduct such research would require that the project severely limit its scope. Similarly, given the sensitive nature of domestic violence, it was obvious that records and other documents would not reveal the impact of the court process on those using the courts, an important example being whether interpersonal treatment may dissuade potential petitioners from even using the courts. Perhaps most important, records would not necessarily explain why certain things were happening in the courts, which in many cases can only be determined by asking the actors involved. Reports of experiences and perceptions offer this broader and deeper picture. Of course this approach will bring out the differences in perceptions of the various participants and, in some areas, participants' statements may differ from what readers know to be the law, practice, or policy. However, with enough reports, the Trial Court was confident that it could piece together a reliable understanding of the strengths and weaknesses of the court's handling of cases involving domestic violence.

CHALLENGES FACING THE COURTS

Conducting this assessment exposed several overarching challenges facing the court. These set a contextual stage for the details discussed in this report and merit introductory attention.

STRIKING A BALANCE. It became clear through this study that the courts struggle every day to strike the balance between the obligation to neutrally implement laws and rules of court and the desire to give compassionate, meaningful service to victims who come through the doors seeking help. This tension will be both implicit and explicit throughout the report. It appears when counter staff are instructed not to give legal advice, but are guided to assist complainants to fill out complex and comprehensive forms. It appears when defendants claim that judges give out protective orders too readily, while complainants claim that judges do not give adequate attention to evidence that they should apply the statutory presumption that custody to an abusive parent is not in the best interest of the child. It appears when caseloads are so high, and staffing so low, that courts can barely keep up, yet attempts to resolve this with creative use of probation staff result in potentially dangerous results for victims of abuse.

This tension also appears in the different use of language between different study participants. For instance, members of the advocacy community speak of victims feeling a lack of control in the courts. They use the language of empowerment, which is a core value for surviving and leaving abuse. Yet court personnel speak of rules, laws, and procedures as controlling proceedings in court. Such differences in language may lead each party to believe that the other does not understand or care about the point of the court process, whether it is to implement the law or to empower victims to have control over their own safety. In fact, this again demonstrates the challenge of the delicate balance facing the courts.

In a report such as this one, each individual speaks from his or her own knowledge and experience, offering that one perspective. The hope is that, by hearing from so very many people and perspectives, this assessment will paint a fuller picture which will help the courts to improve how they strike that delicate balance.

IMPORTANCE OF COLLABORATION. The individuals who work in the courts expressed their recognition that the community relies on them to provide protection to those seeking protection through court orders. These individuals also recognize that, in the end, orders issued by the courts are just documents. They are only useful when people abide by them or when the courts or others effectively enforce them. A key value of this report will be not only to identify how the courts can fashion safe and thoughtful orders and convey the message that they take these matters seriously, but also to expose the many ways the courts and others can continue to work together to ensure that the entire "safety net" is as secure as possible.

UNDERSTANDING THE COURT PROCESS. Laws and court proceedings are extremely complex. Professionals spend years mastering them, while most litigants are new to this often confusing world. Thus, it is not surprising that the study revealed many instances where individuals clearly did not know what was happening, or had happened, in court. While this may account for reports in the assessment which seem to conflict with law and policy, it also points unequivocally to the need for those working with parties before the court to improve how they help the parties understand their court experience. This report ought to be a helpful guide in that effort. Please see *subsection D.* of *Section V.* for a further discussion of this point.

DAY IN COURT. People expect to have their day in court. This often means that they just want to know that they have been heard, that the judge or court official is taking their side of the story into consideration. Unfortunately, laws and court processes are extremely complex. The study revealed that the courts need to continue to assess how to ensure that all relevant views are heard and how to explain results so that all individuals understand why their perspective may not have resulted in a final outcome in their favor.

HIGHLIGHTS OF KEY ISSUES: A CONTINUUM

As the study progressed, it became clear that there was consensus about a range of issues and practices in the courts. These fell on a continuum from areas and practices which work well to those needing serious attention. The following section highlights these key findings as they fall on this continuum. The report itself offers detail on these issues, as well as on the many other issues raised by participants.

The section is divided into three parts: (1) areas in which there was general agreement as to what is working well in the courts; (2) areas in which there has been significant initiatives and real progress, but where continuing efforts are needed; and (3) areas in which there is general consensus that serious concerns remain and must be addressed by the courts. Under each of these three sections, the highlighted topics are discussed in alphabetical order.

I. WHAT WORKS WELL

ADVOCATES

Most of the study participants agreed that advocates for plaintiffs have become a vital part of the system and the courts rely on them heavily. There are a number of different types of advocates who operate within the court system both in the civil and criminal arenas. Advocates play critical roles in numerous court-related areas including assisting pro se litigants in completing often complex court forms, explaining the court process, providing litigants with emotional support, privacy and enhanced security, assisting the court in case flow, and providing information to judges. They also often act as facilitators and conveners of domestic violence roundtables. (See *Sections I. A.; I. C.; II. A.; II. B.; II. M. 1; V. C)*. Important factors that contribute to the effectiveness of these advocates include extensive training in advocacy and the legal system, consistency in staff, and comprehensive supervision.

The work of advocates has been supported by the court in a number of ways. In most courts, the staff in the clerks' and registers' offices work closely with the advocates, referring matters to them and relying on them for assistance with litigants. In a number of courts, advocates have been provided with at least a small space within the courts, which provides security, privacy, prompt

availability to court staff, and a presence in the court system that gives the advocates critical credibility. (See *Sections I. C; I. D; I. E; II. A*).

SERVICES FOR DEFENDANTS

In addition to concerns for the needs of plaintiffs seeking protection from the courts, study participants expressed a concern that defendants in these cases, who are also often unrepresented by attorneys, need to understand the court process and the meaning of any orders issued against them. Also noted was the concern that the appearance of justice is lost when there are advocates and services for plaintiffs but often no one who will even speak to the defendants.

To address these concerns, several localities have developed pilot projects and new programs which provide information and/or referrals to defendants in 209A cases. The information provided describes what will occur in court that day, explains what a restraining order means (including a detailed discussion on what is and is not permissible under a particular order), and details what might be involved in future court proceedings. Referrals might be to programs for batterers' intervention, shelter (for persons who must leave their homes), educational/job skills, and substance abuse treatment. These programs not only provide valuable information and referrals for defendants, but may also assist by stabilizing a potentially dangerous defendant and perhaps defusing a potentially volatile situation. Thus, in the long run, these programs could benefit plaintiffs, defendants, and the court. *(See Section II. N).*

II. AREAS OF PROGRESS BUT STILL MORE TO DO

DOMESTIC VIOLENCE ROUNDTABLES

Traditionally composed of service providers, advocates, court staff, and law enforcement personnel, domestic violence roundtables meet regularly and provide a setting in which issues and concerns with a court's handling of domestic violence cases can be raised in a non-confrontational and constructive manner. *(See Section V. C.).*

In some areas of the state, roundtables continue to be an active and vibrant resource for the community and the courts. However, in recent years, the participation of court personnel in these roundtables has diminished. This

restricts the usefulness of the roundtables as a place to raise and resolve issues with the court. Some study participants felt this reduced participation is due to the fact that, following a 1998 opinion of the SJC Committee on Judicial Ethics, judges are no longer participating in community domestic violence roundtables. *(See Section V. C.).*

GRANTING OF 209A ORDERS

It appears that meritorious 209A complaints are generally granted. Very few study participants expressed significant concerns that orders are not being issued in appropriate cases, that plaintiffs are routinely not believed, or that onerous and unachievably high levels of proof are being required, all major issues ten or fifteen years ago. (See *Section II. J.*).

A different concern, however, was expressed by some: that orders are, in fact, virtually always granted. These participants felt that the courts were exercising little or no judgment or were not utilizing the necessary standard of proof. While there is evidence that the "pendulum is swinging back" with judges more aware of the serious effects on the defendant of granting an order (and thus considering the issues more closely), there is the perception that anyone who wants an order gets it and that defendants are not really listened to by the courts. (See *Sections II. I; II. J.*).

In addition, there are still concerns that although orders are granted, the orders are not always crafted in a way that is both comprehensive and enforceable. Study participants felt that hearings are not always conducted in a way that allows the court to obtain all of the relevant information so that effective orders can be granted. (See *Sections II. I; II. J.*).

GUIDELINES

The Guidelines for Judicial Practice: Abuse Prevention Proceedings, issued by the Administrative Office of the Trial Court in 1996 and updated in 1997 and 2000, cover an extensive array of topics and provide judges and other court personnel with guidance on almost every aspect of handling cases involving domestic violence, including complaints under M.G.L. c. 209A, domestic relations matters, criminal prosecution and enforcement, and certain juvenile matters. They are modeled on their precursor, the 1986 *Standards of Judicial*

Practice: Abuse Prevention Proceedings issued by the Chief Justice of the District Court.

The *Guidelines* elucidate both statutory and case law, accepted procedures, and best practices. They include commentary to illuminate the reasons for each guideline. Advocates and practitioners from other states have indicated that the *Guidelines* are considered a national model.

There is, however, a concern that not enough people both within and outside of the court know of the *Guidelines*, how to obtain them, and how best to use them. Some expressed a desire for a streamlined system of updating the *Guidelines* when there are changes in statutes or case law and a process to make sure that the updates reach all the appropriate people. (See *Section V. A.*).

SECURITY, PRIVACY, AND CONFIDENTIALITY

The Administrative Office of the Trial Court and a number of individual courts have taken steps to ensure the safety of victims on court premises and to try to address their needs for privacy and confidentiality. There were many positive statements concerning court officers' attention to safety. A number of courts have also taken steps to provide separate spaces for advocates and plaintiffs. In April 1999, the Trial Court published the *Court Assessment Project Final Report & Design, Recommendations for Victim/Witness Waiting Areas*. Funded under the Violence Against Women Act, this report was the result of extensive work developing standards to be used in court house design. The report also contains suggestions about how to handle the need for private space in existing courts. (See *Sections I. D.; II. B; II. C.*).

Many courts, however, do not provide such private space. Though this is primarily due to the structural limitations of existing court facilities, it can also be an issue of policy (i.e. making it a priority to do all possible to find appropriate space). With several new courts being planned and built, this issue must remain at the forefront of structural design plans. *(See Sections I. D.; II. B.).*

Security also remains a major concern. Due to court expansion, staff attrition, and budget constraints, there is a serious security personnel staffing shortage throughout the state. Any future cuts in the security budget could have serious

ramifications for safety in the courts. (See *Section II. C.).*

TRAINING

The Trial Court has provided substantial training to all court staff over the years. This has included All-Court and regional conferences, extensive and varied training for judges and court staff at all levels, and the provision of funds for local trainings. See *Section V. A.* Appendix pp. 14-15 for further details and a listing of trainings over the past several years.

Despite the Trial Court's clear and continuing commitment to training, many study participants identified the need for training for judges and other court personnel on issues of domestic violence as a priority. While it is clear that the Trial Court needs to let people know about the extensiveness of the training offered, the Trial Court also needs to continue exploring the question of the type and frequency of training. Many noted the need for judges and court personnel to have periodic "refresher" trainings in this area. Others indicated that not all court staff who wish to attend the trainings are able to do so. Study participants indicated that the court should explore ways to make sure everyone who wants and needs training gets it, and that the training is effective, while also revisiting the question of making attendance at some trainings mandatory. (See *Section I. E.; II. P.; III. H.; III. J.; IV. C.; V. A.*).

III. WHERE THE COURT NEEDS TO DO BETTER

CHILD SUPPORT

One of the most frequent and serious concerns raised by study participants was the fact that many courts do not issue child support orders as part of 209A orders. For some plaintiffs, a child support order is absolutely necessary for them to be able to establish the financial security required to leave their abusers. They would be subject to pressure to return if they felt their children were suffering due to financial deprivations.

There were a number of reasons raised to account for District Court judges not issuing such orders. These included lack of courtroom and court house support to assist District Court judges in issuing orders; no simplified or streamlined process for District Court civil contempt proceedings to enforce such orders;

concern that an order of child support against a defendant could exacerbate an already potentially dangerous situation; and not wishing to tie support to a 209A order, which, if not extended or if vacated, would expire (a concern also shared by Probate and Family Court judges). (See *Section II. M. 1.*).

However, there are District Courts that can and do regularly issue child support orders and study participants noted simple steps which can be taken to overcome the logistical problems. Judges can add to *ex parte* orders the requirement that parties bring financial documentation to the hearing. Advocates can and do assist parties in completing child support guideline worksheets. It was also noted that there are District Court staff who already have experience in obtaining financial information from parties in connection with other civil matters. The Department of Revenue has an on-line program on its web site which can be used to calculate child support payments simply by plugging in a few numbers. (See *Section II. M. 1.*). Finally, advocates and attorneys noted that in many cases, the importance of receiving a child support order at the time of a 209A hearing in either District Court or Probate and Family Court outweighed the concerns about tying the child support to such an order and that this should be the choice of the plaintiff.

CUSTODY AND VISITATION CONCERNS IN DOMESTIC RELATIONS MATTERS

Understanding Domestic Violence. Many study participants raised serious concerns about the Probate and Family Courts' consideration and understanding of domestic violence when making custody and visitation orders. While most advocates and attorneys acknowledged that District Courts and Probate and Family Courts address restraining orders appropriately, there were deep concerns about the understanding of the Probate and Family Court when addressing issues of custody and visitation. These included the concern that many judges, probation officers, and guardians ad litem do not understand the full effect of domestic violence on children, the serious concerns about the ability of batterers to parent, the damages associated with children living with or having unsupervised visitation with batterers, and the dangerousness to children and the non-abusive parent of some custody and visitation orders. Many advocates and attorneys also suggested that judges, probation officers and guardians ad litem are not well educated on how batterers may present themselves appropriately in court, while victims of domestic violence, often suffering from post traumatic stress disorder (PTSD), may present poorly. (See

Sections III. H.; III. J.; III. K.).

Domestic Violence Custody and Visitation Presumption. Many study participants indicated that the passage of the statutory domestic violence presumption concerning custody and visitation has not widely affected actual judicial practice. The statute creates the presumption that in cases where there has been a pattern of abuse or a serious incident of abuse, no form of custody should be granted to a batterer. This presumption can only be rebutted if the court finds by a preponderance of the evidence that the award of any form of custody to the batterer is in the best interests of the child. If there is a finding that a pattern or serious incident of abuse toward a parent or child has occurred and the court issues a temporary or permanent order of custody, regardless of to which parent, the court must enter written findings of fact which address the effect of the abuse on the child and demonstrate that the custody order is in the child's best interest and provides for the safety and well-being of the child. If visitation is ordered in such a case, the statute requires that the court shall provide for the safety and well-being of the child and the safety of the abused parent. Many indicated that there are differing interpretations of the statute, including what type of evidence would require a court to consider if the presumption has been triggered, whether evidentiary hearings are necessary, and whether or not a specific request is necessary before the court will consider if the presumption has been triggered. It was noted that court personnel, the bar and guardians ad litem have different levels of knowledge of the law. This can affect whether or not the presumption is being appropriately considered. (See *Sections III. D.; III. H.; III. J; III. K.*).

Probation Officers. A number of study participants specifically reported that probation officers continue to attempt to force victims of domestic violence to mediate with their batterers, despite statutory prohibitions. They also noted that many victims feel that they have been pressured into agreements by probation officers. While there may be some question as to the legitimacy of such perceptions, they are widely held. (See *Section III. D.*).

Guardians ad Litem. Virtually every study participant who discussed the issue of guardians ad litem (G.A.L.) agreed that there were major concerns with how the system is currently operating. Specifics included lack of experience in identifying or assessing domestic violence; the effect of the use of rotating lists for appointments of guardians ad litem; the adequacy of the current training

programs; the need for consistent judicial instructions, including clarification of the G.A.L.'s role; the excessive weight given to G.A.L. reports by probation officers and judges; and how complaints concerning guardians ad litem can be effectuated. (See *Section III. H.*).

It was recognized that the Probate and Family Court has made a commitment to address these issues and has begun to do so by requiring basic qualifications and training. The Probate and Family Court is continuing this effort by working towards the adoption of standards for guardian ad litem training and practice, while exploring methods of reviewing guardian ad litem performance, such as mentoring and supervision, and considering the best way to institute a clear and effective complaint process. (See *Section III. H.*).

COORDINATION BETWEEN THE DISTRICT COURT AND THE PROBATE AND FAMILY COURT

Most study participants believe that significant work needs to be done regarding the relationship between the District Court and the Probate and Family Court in the area of 209A complaints.

Two major areas of concern were identified. The first was that District Court judges sometimes attempt to force plaintiffs with children into filing 209A complaints or other actions in Probate and Family Court. For example, many District Court judges are giving short-term 209A orders (one to three months) and telling the parties to file an action in Probate and Family Court. These actions can result in parties going back and forth between the courts, which is logistically difficult for many plaintiffs with children who may have limited access to transportation, child care, and who may lose significant work time. Attorneys and advocates feel that this practice evinces little or no concern about how emotionally difficult it is to come to court. It may also force plaintiffs into court actions for which they are not ready, such as divorce or paternity. (See *Section II. K.*).

The second major area of concern involves the difficulties that have arisen when a Probate and Family Court judge amends a District Court 209A orders which conflicts with a subsequent custody or visitation order issued by a Probate and Family Court in a domestic relations matter. Modification of the District Court order was originally preferred to vacation, so that it would not appear that one

court was taking jurisdiction away from another court or that one judge was superceding another. Vacating the order also places the burden on the plaintiff having to file a new 209A restraining complaint in the Probate and Family Court.

However, it has become clear that the amendment process has not functioned as smoothly as hoped. See *Section III. G.* for examples of the problems that have arisen. It appears that it is now time to explore mechanisms that can better facilitate the transfer and/or coordination of cases between different court departments.

Another major concern that arose when parties are involved in proceedings in multiple courts is the need to be able to determine what other court matters which involve those parties may be pending. This issue is being addressed by MASSCOURTS, the court automation project. (See *Section II. F.*).

DISPOSITIONS OF VIOLATIONS OF RESTRAINING ORDERS

While it appears that judges tend to grant meritorious 209A complaints, respondents generally agreed that the courts need to improve how they determine proper sanctions for violations of restraining orders. As might be expected, some participants report that dispositions are too harsh, while others feel they are too lenient. What is consistent, however, is the impression that judges do not make an adequate effort to respond to the specifics of each case, painting them all with a broad brush. (See *Sections IV. E.*).

Many of the concerns about the disposition of violations of restraining orders arose in the context of probation surrenders. These concerns include court response to cases in which a defendant fails to attend or complete a batterers' intervention program; the need for graduated penalties to be imposed upon subsequent violations; and different, and hopefully more effective, treatment options during probation. Forthcoming District Court sentencing guidelines are expected to address this concern. In addition, practice will now be affected by the recent statutory amendment which creates a mandatory presumption that defendants who violate 209A restraining orders will be referred to certified batterers' intervention programs. (See *Sections IV. E.*).

INTERPRETERS

There was universal agreement that the availability of interpreters remains a critical issue in cases involving domestic violence. Many study participants were worried about the funding of the Office of Court Interpreter Services (OCIS) and particularly the effect on the availability of interpreters for emergency hearings and the availability of interpreters in less common languages. In addition, there were specific concerns about the use of one interpreter for more than one party in domestic violence cases and the reliance on advocates as interpreters. (See *Sections I. H.; II. P*).

There are also major concerns about the quality of the services provided by interpreters, both in terms of skill and, more critically, as to interpreters allowing their cultural biases to affect their work. Many commented on how interpreters' lack of understanding of issues concerning domestic violence also results in problems. (See *Section II. P*).

Finally, there was a general lack of knowledge about certain aspects of the OCIS, such as the existence of the Language Line, which allows access to interpreter services by telephone in emergency situations, and the complaint process available through the OCIS. The AOTC and the Committee for the Administration of Interpreters have promulgated Standards and Procedures which will provide judges, attorneys, interpreters and other court personnel important information about accessing, using, and providing quality interpreter services. (See *Sections I. H.; II. P*).

PRO SE LITIGANTS.

Pro se or self-represented litigants are a challenge for the courts in every area. The problem is of particular concern when domestic violence is involved, as the safety of plaintiffs and their children is at risk. (See *Sections II. H.; III. C.*).

The inability of *pro se* litigants to accurately complete court forms continues to be a problem. The 209A forms have been revised since initially developed, but need additional work to make them more accessible to lay persons, as well as meet the needs of court staff handling these cases. In domestic relations matters, Probate and Family Court forms are quite complex and are a significant problem for *pro se* litigants. While advocates and Lawyer of the Day programs

have made a major contribution in this area, this assistance is not always available. (See *Sections I. A.; II. H.; III. A.; III. C.*).

The need for more lawyers to represent indigent and near-indigent litigants was constantly noted. Particularly in Probate and Family Court domestic relations matters, advocates, even when available and trained, can only do so much. The issues of custody and visitation have such serious consequences in cases of domestic violence that the need for representation is critical. Thus many study participants raised questions about how the courts could better serve *pro se* litigants and encourage *pro bono* efforts by the private bar. (See *Sections II. H.; III. C.*; *III. D.; III. J.*).

IV. IMPACT OF THE BUDGET CRISIS

The budget crisis that has affected the entire Commonwealth of Massachusetts has had serious consequences for the Trial Court. Over the past two fiscal years the Trial Court budget has been reduced substantially. Staff positions have been reduced by over 12%, a loss of almost 1000 people. Some of the resulting financial limitations directly affect cases of domestic violence. For example:

- **Court Staffing Levels**. Reduction of the staff in clerks', registers', and probation offices affects the ability of court personnel to assist parties, provide information promptly to judges, and supervise cases. This can result in delays and inattention which are harmful to victims seeking the protection of the court. Critically, these reductions decrease the ability of the courts to dedicate specialized staff to cases of domestic violence. The operation of a complex court security system with fewer court officers and associate court officers has raised many safety concerns.

- **Training.** Reduction in the funding of the Judicial Institute could jeopardize the excellent and comprehensive trainings developed for judges and court personnel.

- **Child Care Centers**. With the loss of funding, the closing of the Trial Court Child Care Project child care centers, once located in thirteen court houses and serving over 13,000 children annually, has meant the loss of the privacy and protection once granted children. The closure of these programs has also resulted in the loss of the federal funding that

supported literacy and other Child Care Center programs.

The Trial Court has been working diligently to reduce the effect of the major budget and staff cuts of the past two years. However, such a drastic reduction in budget and staff can not help but affect operations. Further reductions could be devastating.

THE NEXT STEPS

The Administrative Office of the Trial Court is proposing to build upon this statewide study and report to develop recommendations for improving services in the future. During the second year of the Project, a series of forums and retreats are being conducted. The forums will present the report findings and allow representatives of the major constituencies involved with the courts in domestic violence cases to contribute to the process of developing recommendations. The retreats will be an opportunity for judges and court personnel to work in facilitated sessions to resolve some of the significant challenges highlighted by these findings.

In addition, the need for certain steps has already been demonstrated during the pendency of this assessment. The Project is moving forward to publish and disseminate a handbook detailing best practices and to provide training for ancillary professionals who are appointed by the court in domestic violence matters.

Finally, this assessment has shown that there is a range of issues and needs unique to individual communities in the state. The Project will start a process by which programs, recommendations, and solutions can be developed and/or instituted locally. This will ensure specific tailoring to local needs, ease of attendance by critical stakeholders, and greater investment in the outcome.

I. ISSUES WHICH ARISE AT THE FILING OF A 209A COMPLAINT

A. FORMS

Over the past ten years there have been a number of changes and improvements to the court forms in 209A cases.[1] These have been in response to both changes in the law and attempts to meet the concerns of court personnel, attorneys, and advocates. Revising these forms has not been easy, as the court must consider the often competing needs to keep the forms as simple as possible and include all necessary information. In particular, it has been a priority to have all of the information that the court needs to issue an appropriate order on the first page of the complaint, but have it in easily readable type.

Despite the many improvements, there are still difficulties. The one most often expressed by advocates and attorneys is that the forms are difficult for *pro se* litigants to complete without help from court staff. Due to both reduced staffing levels and the restrictions on staff on giving legal advice, this assistance is not always possible.

There was uniform agreement among court personnel, attorneys and advocates that domestic violence advocates are essential in helping people accurately complete forms. Because of issues of time as well as the lack of space at courts, many expressed that it would be useful for shelters, advocacy organizations, and service providers to have forms at the shelters and offices. By so doing, advocates could help people fill out the forms prior to coming to court. However, for reasons which are not clear, many courts are reluctant to give the forms to advocates in an adequate quantity to make this possible.

Content of Forms. Regarding the forms themselves, there have been a number of specific concerns or suggestions raised. These include:

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[1] Please see *Appendix* pp. 16-28 for the following forms: Complaint for Protection from Abuse, Abuse Prevention Order, Defendant Information Form in Restraining Order Cases, Confidential Information, Affidavit Disclosing Care and Protection Proceedings, Notice to Defendant in Restraining Order Case, Plaintiff's Motion to Vacate Restraining Order .

- **Child Support.** There should be a statement or a check-off box somewhere on the 209A Complaint or the summons (Notice to Defendant in Restraining Order Case) that informs both parties that if child support is going to be requested, the parties must bring in proof of income, such as the previous year's W-2 and 1099 forms (modeling the Probate and Family Court Financial Statement requirement) or pay stubs for the past four weeks. Some judges do write this requirement in Box 13 on the order, which provides a space for orders not encompassed by the previous check-off boxes.

- **Firearms.** At first glance, the firearms box on page two of the 209A Order Form looks like it might allow a return of firearms, ammunition or gun licenses. Many reported that the judges do not seem to be aware that to keep a firearms surrender order in place at the time of the extension or modification of any order, the box under the extension or modification must be checked.

- **Extensions and modifications**. Many suggested that the forms provide more room on page 2 of the 209A Order Form for extensions and modifications, and that extensions and modifications be listed chronologically so people do not have to move up and down the page to determine the most recent order. Currently, there are completely separate sections for extensions and modifications, making it difficult to locate the most recent order.

- **Time orders expire**. Court staff felt that having orders expire at 4:00 p.m. did not always allow sufficient time for transmission of an extended or modified order to police and probation. A plaintiff might come in for a hearing on an extension of an emergency or ex parte order and still be at court at the end of the day due to a number of possible delays. (See *Section II. D*. below). Therefore, the prior order may expire before the new order is actually issued or transmitted to police and probation.

- **Affidavit Disclosing Care or Custody Proceedings**. There was uniform agreement that this affidavit is difficult and confusing. Sections 3, 7 and 12 are particularly problematic:

Section 3, concerning confidentiality, is confusing because it uses the passive voice and a past tense and appears to apply to a decision that had to have been made in the past.

Section 7, which requests a list of "all pending or concluded proceedings in which I have participated or know of involving care or custody of the above named child(ren)," is not always understood by *pro se* litigants. For instance, many individuals are not aware that if they have a support order under a paternity action there is probably a custody order as well. Others are not aware that Care and Protection, CHINS or guardian proceedings must be disclosed in addition to actions between the parties.

Section 12, requesting information on attorneys and GALs, appears on the second page following the sections requesting address confidentiality. Thus, it seems to apply only in cases where a party is making a confidentiality request, when, in fact, it should be completed in all cases. In addition, a copy of a completed Section 12 should be provided to all other parties in the action, but cannot if the confidential address sections are completed.

The 1999 Probate and Family Court Department *Pro Se* Committee report *Pro Se* Litigants: The Challenge of the Future has a specific recommendation on simplifying the Affidavit Disclosing Care or Custody Proceedings.

- **Confidentiality Forms.** A number of advocates, attorneys and court staff indicated that people, particularly *pro se* plaintiffs, find the confidentiality forms confusing and complex. One problem results from the fact that the Complaint for Protection From Abuse still contains a section to request that an address be impounded and indicates that a Request for Address Impoundment Form should be attached, despite the 2000 amendment to M.G.L. c. 209A, sec. 8, which provides that plaintiffs no longer need a court order to impound address information. A plaintiff can request that his/her address information be kept from the defendant with a Confidential Information form which is handled by the clerk's office. The Confidential Information form, however, states that

at the plaintiff's request the court can also impound certain information, but gives no suggestion as to what sort of information this might be or how impoundment might be different from how the address information is kept confidential.

Distribution of Affidavit. Litigants, according to study participants, often are not provided with a copy of their affidavit filed with the complaint. Study participants recommended that the plaintiff be given a copy. There were opposing points of view expressed on whether a copy of the affidavit should be served on the defendant along with the service of any order and notice to appear. M.G.L. c. 209A, sec. 7 provides that a copy of the complaint shall be served upon the defendant along with a copy of the order. There appears to be no standard practice as to whether the affidavit is considered part of the complaint and it is often not served.

It was noted that defendants are unable to prepare for a hearing without knowing the accusations. Many defendants feel they are "sandbagged" in court with allegations about which they could have brought in evidence or witnesses. They contend that at a minimum, defendants should have the right to know what has been alleged so that they may prepare an appropriate response. This lack of knowledge of the allegations prior to the hearing leads to the appearance that the court has accepted the allegations of the plaintiff and already judged the defendant guilty. Others however, were very concerned that such service could be dangerous. The information in the affidavit may inflame the defendant who might retaliate. Learning of the allegations in a court setting with the authority of the judge present might remind the defendant of the consequences of retaliation and thus deter such a response.

Consistency in Forms. On a more general note, many advocates indicated that there needs to be more consistency in forms. While the Complaint form is the same in all courts, many courts have additional forms that need to be completed, varying from District Court to District Court even in the same county. Court staff confirmed these differences in forms.

Court Staff Concerns. Counter staff indicated that they would like to review any future revisions of forms. They noted that as they get the questions from the litigants they have a good sense of what sections might be confusing. On a very practical note, counter staff indicated that the forms are difficult to handle

because the sheets are difficult to tear apart.

Forms for Linguistic Minorities. The issue of forms also came up many times in speaking to advocates and groups working with linguistic minorities. There was a very strong feeling that forms should be available in different languages, and at a minimum in Spanish. (Please see next paragraph for some of the complexities involved with developing forms in other languages).

On-Line Programs for Forms. Participants indicated that pilot projects in several states are experimenting with on-line programs to allow plaintiffs to complete the forms at a computer terminal in the Court or at a shelter or agency. The court gets a typed complaint and affidavit. Samples of these forms and more information on the Internet-based Domestic Violence Court Preparation Project, which has developed such projects in New York and Georgia, can be found at www.fcny.org/nydvdemo and www.fcny.org/gadvdemo .

New York City has also piloted a Spanish language version on-line program. It should be noted that translation into other languages is not necessarily simple. In New York City, the staff at the Fund for the City of New York indicated that developing the Spanish version required a collaboration among a number of community groups to develop a form using Spanish terminology understandable by Spanish speakers from many different countries.

See *Section III. A.* below for a discussion of current Probate and Family Court plans concerning on-line forms and programs.

B. JUDICIAL RESPONSE SYSTEM ORDERS

In 1984, Massachusetts instituted the Judicial Response System (JRS), a statewide program of the Trial Court which provides access to on-call judges when the courts are closed. The state is divided into regions, and on a rotating basis one judge in each region handles all of the JRS calls for a particular time period. The vast majority of the calls handled by JRS (at least 90%) are requests for 209A orders. The other calls are mainly medical treatment emergencies and requests for search warrants. All judges are provided training and educational materials in each area that they may be called upon to address. This is especially important as all Trial Court judges from the Housing, Land, and Juvenile Courts, who do not handle 209A cases in their own courts,

participate in this program.

The typical JRS call is from the local police who have responded to a domestic violence call. The officer contacts the on-call judge using a beeper or cell-phone number. The judge then holds an *ex parte* hearing (a hearing without notice to the other party) over the telephone and grants any orders she/he deems appropriate. The police officer at the scene fills out the paperwork, including the judge's orders. The order is valid until the next day on which court is in session. Unless the plaintiff appears in court at that time to request an extension of the order, the order expires. This extension is usually also on an *ex parte* basis, unless the defendant has been arrested and is being brought to the court for arraignment.

The Judicial Response System was innovative when begun and is still looked to nationally as a model of effective judicial response to the needs of victims of domestic violence. The system is constantly monitored and refined to best meet the needs of those who call upon it for protection. The current manager of the system is refining the call logs prepared by judges so as to provide more information about the types of calls received and what relief is requested and granted. This will allow educational programs to be more carefully designed and will provide other valuable information for the court. For example, the system is used extensively in certain regions of the state and infrequently in others. Such information can be used to look into how potential plaintiffs are referred to the system and whether better collaboration between the courts and the police departments (who are the usual referrers) and other agencies is needed.

Judicial Attention. The question of how much time the judges spend on these emergency hearings and whether or not they actually speak to the plaintiff was raised by a number of study participants. Some judges rely on the police officer to read the affidavit that has been completed by the plaintiff or rely on the police officer's description of what she/he has been told or has observed. Some, however, always insist on speaking to the plaintiff and indicate that, unless they do so, it will bolster the perception that requests for restraining orders are always allowed with no judgment as to the veracity of the plaintiff. Attorneys and advocates also noted that talking with the plaintiff would also assist a JRS judge to craft the most appropriate order.

A senior judge indicated that whether or not he spoke with the plaintiff was a judgment call. He looked at how much information had already been provided, and then balanced whether having to repeat all the information the victim had already given the police officer would, on one hand make the victim more distraught, or, on the other hand, make the victim feel more assured for having spoken to a judge.

Incomplete Forms. A number of complaints surfaced across the state, but primarily in the western part of the state, that the papers are coming to court from the police without all sections being completed. Sometimes only the time the plaintiff must appear at court is missing, other times critical information such as the name of the defendant, addresses, the judge who issued the order or details of the order itself is not included. A number of people stated that the gun surrender box is almost never checked on the JRS orders.

Return. When a JRS judge grants an emergency order, she/he has to decide whether the plaintiff needs to go the District Court or Probate and Family Court to obtain an extension of the order. A number of study participants, including court personnel, raised the concern that the Judicial Response cases are almost always returnable to the District Court even though the Probate and Family Court might be a more appropriate choice for some plaintiffs if given the option. In some towns the police have the District Court already typed in on the forms and study participants felt that they guide the plaintiffs to that option. Some judges indicated they always discuss the options with the plaintiff but it was clear that many do not. Study participants felt that it was important that the judge ask a victim or, at the minimum, direct the police officer to inquire, whether there are any pending matters between the parties as this information might be relevant to the court to which the 209A is returnable.

Transition to JRS. Counter staff indicated that courts have different times when they stop accepting complaints and begin sending plaintiffs to JRS. In many courts it is 3:30 p.m. or 4:00 p.m., but in some places where the staff has trouble getting Court Activity Records Information (including the Statewide Registry of Civil Restraining Orders) and Warrant Management System information, the court stops accepting complaints as early as 3:00 p.m. These plaintiffs are told to go to the police department and wait until JRS kicks in. This often results in greater waits for plaintiffs and JRS judges getting calls while they are still on the bench in their daytime sessions, in their chambers at

the end of the day, or in the car to go home.

C. Role of Advocates

A number of different types of advocates work with victims of domestic violence. These include civil advocates who may work for a domestic violence victims program or shelter (including the SAFEPLAN advocates described below) or for a health provider; non-police personnel based at police stations (called civilian advocates); and District Attorney victim-witness advocates.

Advocates play a critical role in the filing process when they can actually sit down with plaintiffs, assist them in completing the forms, and advise them about the court process. Court personnel, particularly 209A restraining order staff, rely extensively on advocates and speak of them very highly. It was noted by long time court personnel that the number, role, and expertise of advocates has significantly increased over the years.

This is especially true of the civil advocates who are part of the SAFEPLAN system. SAFEPLAN (Safety Assistance For Every Person Leaving Abuse Now) is a partnership program between the Massachusetts Office of Victim Assistance (MOVA), a state agency dedicated to ensuring the rights of victims of crime, and community-based domestic violence programs and shelters. The advocates in the courts are hired, trained and supervised by their own programs. They are additionally supervised by SAFEPLAN Regional Coordinators employed by MOVA. SAFEPLAN advocates provide court advocacy, safety assistance and resource referrals. They receive extensive training both in working with victims of domestic violence and in the legal process. Expanding as resources have allowed, SAFEPLAN currently has advocates in some or all of the District and Probate and Family courts in eight counties.

Other counties are serviced by advocates who are usually associated with community-based service programs and, in general, are also highly respected. This is particularly true of advocates from agencies such as HAWC (Help for Abused Women and their Children), based in Essex County, and Casa Myrna Vazquez, based in Suffolk County, which cover a number of different courts. While a number of people expressed concern that some of the advocates from smaller agencies do not have enough training in the legal process to most effectively assist victims, this did not seem to be a widespread problem.

A number of hospitals also have advocates on staff who assist victims of domestic violence both to obtain services and to assist them with going to court. These advocates assist in contacting the Judicial Response System, accompany victims to court or connect them with advocates who can assist them in court. The Center for Community Health Education, Research and Service (CCHERS), a partnership of many Boston community health programs and Northeastern University, also has advocates based in community health centers to assist plaintiffs in court or connect them with court advocates.

Study participants pointed to civilian advocates as extremely effective. Based in police stations, but usually employed by a community-based service provider, these advocates follow up on every case of domestic violence reported to the police. They are often the first person to whom a victim speaks and they are able to explain and prepare the victim to navigate the court system. They can also act as an important liaison between the police, service providers, and the courts.

In addition to the civil advocates described above, each District Attorney's office has a staff of victim-witness advocates. Although their primary role is to assist victims in a pending criminal case, in some counties or courts, district attorney victim-witness advocates assist plaintiffs in 209A cases in preparing and filing the forms as well as in the courtroom.

D. PRIVACY

The lack of privacy for 209A plaintiffs was cited by many advocates, attorneys, and litigants as a serious problem and a real obstacle to people seeking protection. This lack of privacy includes the inability to speak in a confidential manner about sensitive, sometimes difficult, information. Many feel that some plaintiffs are actually dissuaded from coming to court because of the lack of privacy.

These study participants noted that for many victims the prospect of entering a crowded court house filled with people they know from their community is daunting. These circumstances also make it very difficult for victims of abuse to speak to court personnel and advocates about their experiences, sometimes out of shame or embarrassment, other times because they want to protect their

families, particularly their children, from the stigma they fear attaches to families with violence.

Advocates report that it is difficult to counsel a plaintiff and to assist him/her in completing forms while sitting on a bench in a busy hallway. Plaintiffs are reluctant to speak about intimate details of their lives in such a setting and may not provide the advocate with all of the necessary information. Many reported that plaintiffs will often reveal sexual abuse only after the hearing when they are speaking privately at the advocate's agency office.

The issue of confidentiality is particularly important in cases where the plaintiff is in a same-sex relationship. Going to court may result in the person's sexual orientation being "outed." Given the pervasive discrimination in our society and the potential for being harmed simply based on one's sexual orientation, courts need to be particularly sensitive in these situations.

Given such concerns, advocates felt that any steps a court can take to provide some minimal privacy will make the court more accessible to people in need. Additionally, many advocates pointed to having a space of their own as important not only to provide privacy and confidentiality, but also because once they have an "official" space they are taken more seriously by court staff and judges. Clerks' office staff are more likely to seek them out with referrals. Many attorneys and advocates acknowledged that in some courts the building constraints make this impossible. Some courts, however, have been creative in trying to carve out even a tiny space for advocates to assist plaintiffs, moving file cabinets to the side of a room to make a little space or working with others with court house offices (i.e. assistant district attorneys) to see if space can be shared. Other courts have not. It was also pointed out that there were sometimes temporary or partial solutions available such as allowing advocates to meet with plaintiffs in jury rooms when not in use but that these options are not always explored. It was suggested that perhaps someone from outside a particular court could undertake an examination as to possible solutions to the space problem. It was also noted by court staff that the planning and design of new court houses and the renovation of older courts are handled by the Court Capital Projects Division of the Administrative Office of the Trial Court and not directly by the individual courts.

Best Practices: In April, 1999, the Administrative Office of the Trial Court published the *Court Assessment Project Final Report & Design Recommendations for Victim/Witness Waiting Areas*. This report, funded under the Violence Against Women Act, was the result of extensive work developing design standards to be used in court house design. With several new courts being planned and built, the report can play a useful role in enhancing privacy and safety in the courts. The report also contains suggestions on how to handle some of the issues of privacy and safety in existing courts, with little or no extra resources.

E. COUNTER STAFF

Counter staff are the clerks' or registers' office staff who deal with the public, accept filings and, specifically, handle the filing and processing of 209A complaints. There was a wide variation in the comments on how counter staff are handling these matters. It does appear that the more specialized the assistant clerks and registers and counter staff are (i.e. when there are people specifically assigned to 209A cases), the better attorneys and advocates feel the tasks are handled. The drawback identified to having specific staff assigned to these cases is that sometimes other staff know little or nothing about 209A forms or procedure or how to deal with a plaintiff. If the specialized staff person is out sick or on vacation, working in a short-staffed court, or on another assignment, people are faced with ill-prepared or even hostile staff. Study participants felt that everyone in a clerks' or registers' office needs to be able to handle 209As competently. In some courts, people rotate the position and handle the 209A cases for three months at a time, giving them expertise, but also giving them a break. In other courts, people cover specific days; one staff person handles them on Monday and Tuesday and the other the rest of the week. In both cases, knowledgeable people are handling the cases and are available for back-up.

Assistance with Forms. *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 2:01 states that:

> The primary role of court personnel when a plaintiff seeks relief under M.G.L. c. 209A is to provide assistance in completing the complaint. The plaintiff should be questioned briefly about the nature of the case

and then assisted in completing the complaint form and other documents. Court personnel should proceed with patience, respect, professionalism and objectivity.

In many courts where no advocates are available, the counter staff are unable, due to constraints such as time or staffing, or unwilling, perhaps due to concerns about providing legal assistance, to go through the forms step by step with the plaintiffs.

Best Practice In Quincy District Court, the Clerk-Magistrate has assigned several staff to process restraining orders. He has given them a separate room where they go through the complaint and other forms with the plaintiff, filling them out for the plaintiff. A victim-witness advocate from the District Attorney's office assists the plaintiff in completing the affidavit and explains the process. Depending on the number of plaintiffs, the explanation of the process may be done in a group. Although there is no space for a separate waiting area, there is a bench outside the restraining order office that is on a different floor from the courtrooms, providing some separation between the plaintiffs and others waiting for different court matters.

Advice. Clerks' office staff are often warned that they may not give legal advice to the public, but as noted above, they are directed to give assistance to plaintiffs seeking 209A relief. The *Guidelines* also specifically state that court personnel should not attempt to screen out complaints. *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 2:01. Some study participants expressed concern about the lack of clarity about the line between giving general assistance and giving such legal advice. Clerks' office staff do not want to cross that line but wondered what to do in cases where the facts do not clearly fit into the 209A framework and no advocate is available who can speak to the person. Attorneys and advocates, on occasion, expressed concern that some clerks' office staff cross the line, giving advice that dissuades the plaintiff from seeking a 209A order (i.e. "those facts won't give you an order" or "you should be in Probate Court"). Other attorneys were concerned that staff "prepped" plaintiffs by telling them they had to make certain allegations to obtain an order.

Referrals to Advocates. In most courts, clerks' office staff are very good about referring plaintiffs to advocates. There are instances where this does not happen, but they seem to be the exception. In courts where there are more than one type of advocate, (i.e. district attorney victim-witness advocates, civil advocates), questions did occasionally arise concerning to whom the initial referral is made. (See *Section II. A.* below)

Same-Sex Relationships. Advocates for the gay, lesbian, bisexual, and transgender community indicated that some counter staff suggest to some plaintiffs in same-sex relationships that they file a complaint based on a roommate relationship. However, this can result in an order that is not sufficiently protective if the court does not understand that it is handling an intimate relationship.

Training. The issue of training came up repeatedly. Many of the 209A restraining order staff indicated that they had never received training on 209A case procedure. A focus group of 209A restraining order staff from several counties quickly became a support group as staff from different courts exchanged information on how they handled matters. These staff members all indicated that they had no training on domestic violence. It was also noted that while restraining order staff were generally sympathetic to the plight of the plaintiffs and showed a real concern for their safety, there was some expression of frustration with plaintiffs who came before the court multiple times. Comments included maybe a plaintiff should have to pay a filing fee if that person has already filed two complaints and either not shown up at the ten day hearing or had the orders vacated. See *Section V. A.* below and Appendix pp. 14-15 regarding training provided to Trial Court staff.

F. OTHER RESOURCES

Videos. It appears that few, if any, courts use or are able to use the "For Your Protection" videos. These videos, produced by the Judicial Institute, a department of the Administrative Office of the Trial Court, with funding under the Violence Against Women Act, provide parties with step by step information on how to obtain protection from the courts, as well as addressing some of the issues victims face when trying to decide whether to proceed with an abuse prevention complaint. The videos are available in eight different languages

with two closed-captioned versions in English and Spanish. Many court staff had never heard of the videos. Others vaguely knew they existed, but indicated there was nowhere it could be shown in the court. Some thought that it would not be appropriate to show a video to someone who is distraught, but others thought if there were a place it could be shown, it might be a good way for the person to spend some of the necessary waiting time. A number of shelters use the videos, although some indicated they specifically warned their clients that the process would not go as smoothly as depicted. There were also some reports of police stations using the videos.

Flyers. Advocates mentioned the domestic violence information flyers in some court brochure racks and in restrooms. It was noted that such flyers are particularly useful in Probate and Family Courts where people are often in court on matters relating to their relationships but who may not yet have acknowledged or addressed the presence of domestic violence in their lives.

G. Relationship Between District and Probate and Family Courts - Filing

One issue raised is the treatment of plaintiffs with children who approach the District Court for 209A orders. In the past there were many complaints that these plaintiffs were not allowed to file but were sent, instead, to the Probate and Family Court. While this seems now to be a rare occurrence and is considered more of a "thing from the past," a number of advocates, Probate and Family Court staff and Probate and Family Court judges indicated that it does still occur. Others suggested that in many cases, the plaintiff is not refused the opportunity to file a complaint in the District Court, but is strongly urged to go to Probate and Family Court. To a *pro se* plaintiff, the statements of the District Court staff may appear like a direction rather than a suggestion. It is not clear how often this occurs as a result of direction from the judge, clerk or register or how often it is due to the staff's own initiative.

H. Issues for Linguistic Minorities

As noted above, many study participants believe that the 209A forms should be available in different languages**.** A number of people also proposed that court signs be in multiple languages. Many, but not all, courts have signs in Spanish. In Dorchester signs are also posted in Vietnamese.

A number of people noted progress in the area of making the court more open to minorities (both linguistic and ethnic) and pointed positively, in particular, to the efforts of the courts to maintain a diverse workforce.

Advocates and court personnel were particularly concerned with the difficulty of obtaining interpreters on short notice when 209A orders are sought on an emergency basis. Many court personnel reported being very frustrated and concerned when faced with an obviously distraught and frightened plaintiff with no way to explain the procedure or assist the plaintiff in completing the forms. Here again the role of advocates has become crucial. Most advocate programs have made a significant effort to recruit advocates who can speak other languages. Many court personnel noted that they were extremely relieved and pleased to be able to refer matters to such advocates. However, limitations on staff mean that not all languages can be represented and, at times, Spanish-speaking advocates are forced into trying to assist Portuguese- or French-speaking plaintiffs in completing forms.

The Office of Court Interpreter Services provides a Language Line which allows courts to access interpreters by telephone. If the interpreter does not have the forms and is not in a place where they can be faxed, the Language Line is not as helpful in completing the forms. Even so, the Language Line can be a significant asset for emergency hearings. However, very few study participants had ever heard of the Language Line, and they reported only two or three times in which it had been used for a 209A hearing.

See *II. P.* below for more information on linguistic minorities.

II. ISSUES WHICH ARISE IN 209A HEARINGS

A. ROLE OF ADVOCATES

As noted above in *Section I. C.*, most of the statements about advocates were extremely positive. Members of every focus group were asked to name one or two things that the court did well in handling cases of domestic violence. The presence of advocates in the courts and the acceptance by the court of those advocates was the most common response. Court personnel were among the group most appreciative of the advocates and indicated that the system of

obtaining protection from domestic violence would be seriously hampered without them. This is particularly true of courts with SAFEPLAN advocates. Generally, district attorney victim-witness advocates are also spoken of highly. Of course, there were some concerns about individual advocates, but they are not systemic.

A number of people did point out the high turnover in these positions, which are very poorly paid and stressful. This can somewhat limit the effectiveness of an advocate, which is generally enhanced when the judge as familiar with the advocate and the advocate knows the judge's style and preferences.

Support from Advocates. In addition to their crucial role in assisting plaintiffs to complete the forms, advocates also assist with the courtroom case flow by bringing information to the attention of the courtroom sessions clerk. For instance, the advocate may let the sessions clerk know that the defendant is also being held on a criminal matter, thus enabling the clerk to bring both matters forward together. The advocates also play a role in providing safety, privacy, and confidentiality for the plaintiffs while they are waiting for a hearing. If the advocates have an office, a plaintiff can wait there, out of sight of people she/he may know and away from the defendant and, potentially, the defendant's family. Even without such a space, the ability of the advocate to sit with the plaintiff in a crowded hallway assists in protecting the mental and physical safety of the plaintiff. Once the forms are filed, the advocate is able to answer questions such as where the plaintiff will stand in the courtroom and what kind of questions the judge will ask. Often the answers to such questions will reassure the plaintiff, who then feels able to stay and go through with the hearing.

Zealous advocacy. There was also a concern raised, primarily by defense attorneys, that advocates are sometimes too zealous, giving the plaintiff who might not actually have grounds for a 209A coaching or a road map for what to say. According to some, plaintiffs are often not advised of the consequences that a 209A order might have for the defendant vis-a-vis work, nor told that once the police are brought into a violation situation, the plaintiff no longer has control over what will occur (i.e. potential of jail time for the defendant and loss of financial support). Some felt that too many advocates presume that all women are suffering from battered women syndrome and that they need to be helped or pushed into getting an order.

Training. Some participants raised concerns about the training, particularly around legal issues and court procedure, of advocates in courts which are not covered by SAFEPLAN or district attorney victim-witness advocates.

Child Support. In a number of District Courts, plaintiffs are unable to obtain child support. (See *Section II. M. 1.* below). Child support orders are often more easily obtained in courts where there are advocates who can play a crucial role for both the plaintiff and the court by completing the child support guidelines worksheet.

Vacating Orders. Judges and court staff pointed out that advocates are particularly useful in cases where plaintiffs are asking the court to vacate previously granted orders. They noted the ability of the advocate to sit down with a plaintiff and determine why she/he is making the request, to ascertain that she/he understands the implications of vacating the order, and to discuss whether or not there might be some other solution that would address the parties' concerns (i.e. vacate the stay away order but not the refrain from abuse provision). Although the judge is likely to make the same inquiries, having the matter discussed beforehand allows a quicker and more efficient hearing and one in which the judge can feel more confident that the party understands the implications of the request and the resulting order.

Multiple Advocates/Confidentiality/Conflict. As noted above, in some courts there may be multiple advocates including both civil advocates and district attorney victim-witness advocates. (*Section I. C.*) In most courts where this occurs, the advocates work together very well. However, in a few cases, there were reports of conflicts between these different types of advocates. Some civil advocates, as well as attorneys representing both plaintiffs and defendants, were also concerned that district attorney victim-witness advocates are on occasion torn between advocating for the victim, who might not wish to go forward on a prosecution, and being responsible and loyal to the District Attorney's office by whom they are employed and which may be seeking prosecution. Although it did not come up often, these study participants reported that some victims had told them that victim-witness advocates pressured them into proceeding in criminal cases, sometimes telling them that they would be subpoenaed to testify and could be charged with perjury if they were to recant. They indicated that the clients saw these statements as threats. It is important to note that these

complaints generally appeared to be based on statements made to the civilian advocates or the attorneys by victims and not based on their own contact with the victim-witness advocates, and, thus, may represent the victims's understanding of what was said to them, not necessarily what was actually said or intended.

Some study participants were concerned that victims are often not clear about what type of advocate is assisting them. An important consequence of this confusion is that plaintiffs are not always aware that what they say to a district attorney victim-witness advocate may not, in certain circumstances, be completely confidential. As employees of the District Attorney, victim-witness advocates are held to the same rules of discovery which apply to assistant district attorneys. If there is a criminal case pending, such employees are constitutionally required to provide the defense with any exculpatory evidence, even in the absence of a request. Exculpatory evidence is evidence which can be used by the defense to counter the prosecution's attempt to prove beyond a reasonable doubt that the defendant committed the criminal offense charged. This could include information that the victim or a witness has communicated a different version of events to the victim-witness advocate than she/he told the police, information that might affect the degree of crime charged (such as if the defendant was suffering from alcohol intoxication), or information that might affect a claim of self-defense. In addition, on request, prosecutors, including victim-witness advocates, must disclose all material and relevant "statements" of a victim or witnesses as defined by Mass. R. Crim. P. 14(a)(2). Similar information, given to a civil advocate would likely be privileged under M.G.L. c. 233, sec. 20K. Although a civil advocate might be required to divulge exculpatory evidence if requested by the defense and a judge makes a determination that the evidence is exculpatory, civil advocates do not have the same constitutional requirement as the prosecution to proffer such evidence without a request and only need to provide what a judge finds to be exculpatory and not necessarily all statements.

Treatment of Advocates. Advocates provide mixed reports of how they are treated. As the advocates have become better trained and supervised, they have definitely garnered more respect from court staff. One senior Probate and Family Court staff member indicated that he felt the advocates had become a critical factor that allowed his court to provide efficient and appropriate attention to 209A cases. However, there were also a number of reports of what

has been described as backlash; judges and court staff becoming tired of the domestic violence issue and not allowing advocates to participate to the same extent as in the past. The ability of an advocate to speak in court differs from judge to judge; some require advocates to remain silent, others will turn to the advocate to assist the plaintiff if she/he is having trouble expressing herself or himself or to see if the plaintiff told the advocate information that she/he is now forgetting or leaving out.

Lack of Advocates. One of the major concerns raised, particularly by court personnel and judges, was the lack of advocates in all courts, particularly in many Probate and Family Courts or in courts with low numbers of complaints. In certain courts where judges only sit two or three days a week, advocates are only on duty when court is in session. This is problematic, as plaintiffs come into the court and the clerk's office five days a week.

Best Practices: In areas where a particular court may have a low number of 209A cases and, therefore, not have an advocate stationed there full-time, an advocate at a nearby court will wear a beeper. The court restraining order staff from the first court will beep the advocate if a person comes in to file a complaint. This system is used by the staff at one Probate and Family Court where an advocate is stationed in a nearby District Court. While this seems like a simple suggestion, it was a new idea for some staff attending a focus group with staff from other similarly-situated courts.

B. PRIVACY

The privacy issues discussed above in the section on filing a complaint (*Section I. D.)* are also a concern when, while waiting for a hearing, plaintiffs must sit for hours in a corridor surrounded by members of the community, many of whom will know or guess why they are there. For many plaintiffs, this is embarrassing and painful. Privacy concerns are exacerbated at the hearing after notice when the defendant is present. Many advocates pointed to the difficult situations that occur when the defendant is also accompanied by family members and friends. A plaintiff often cannot find a place to sit, go to the bathroom, make a call or get a drink of water without being stared at by people she/he knows. This can be

"The defendant said he was going to get his truck. I did not think much of this but the plaintiff heard and all of the color drained out of her face. She knew the truck was where the gun rack was."

SAFEPLAN Advocate

very disconcerting, and the discomfort can actually cause plaintiffs to leave the court before their cases are heard. In some cases this may be a security concern as noted below in *Section II. C*. But it is not only a safety issue. There may be no physical manifestation or overt threats or actions. A victim may not be afraid of being harmed or attacked at the court house. However, for traumatized victims of domestic violence, an intimidating look or an apparently innocuous statement can be enough to make a plaintiff to leave the Court even before the hearing has occurred.

See *Section I. D.* above for discussion on steps the courts have taken in this area.

Privacy and confidentiality concerns increase when the plaintiff enters the courtroom for the hearing. Many advocates and litigants relate that it is hard for plaintiffs to make statements concerning their intimate relationships and their abuse in front of many people. This is particularly true where the abuse is of a sexual nature. Often 209A hearings are held at side-bar, a practice noted with approval by many study participants. In some counties, however, advocates are concerned that there has been a backlash against 209A plaintiffs and felt that one of the signs is that judges are no longer holding hearings at the bench. In such cases, particular concern was expressed about making the plaintiff repeat everything in the affidavit in a loud voice. This is especially problematic for plaintiffs in same-sex relationships where either one or both of the parties might not yet be out to the community. The hearing can unnecessarily result in the person's sexual orientation being made public or, because of the nature of the allegations, lead to scorn or ridicule by those in the courtroom. Advocates for such victims also reported cases where the judge has read the affidavit out loud to a crowded courtroom. (See *Section II. I*. below for a discussion of reasons why hearings at side-bar may not be appropriate when a defendant is present.)

Many advocates and attorneys also noted that in many cases, plaintiffs, having no child care available, must bring their children to court. Needless to say, they want to shield their children from the same loss of privacy they suffer while waiting for a hearing, the stares and uncomfortable looks. Additionally, many study participants felt that it is essential that plaintiffs be able to speak in court without their children present to minimize the children's exposure to courtroom

hostility and reliving trauma from hearing violent events described over and over.

Best Practice: The Trial Court Child Care Project Child Care Centers, previously located in thirteen courts and serving over 13,000 children annually, gave needed privacy to the children of plaintiffs. The Centers protected children from the trauma of hearing family violence recounted in court. They also provided a safe place for plaintiffs to wait with their children after a hearing. The Centers further provided a wide array of services and referrals to children and their parents on issues ranging from domestic violence assistance, counseling, shelter, food, jobs, literacy and education. Staff in the child care centers often acted as links or liaisons to the community (sitting on area task forces or participating in community activities) and, thus, made the courts seem more accessible to many in the community. The Centers also received federal funding for many of these services. Unfortunately these programs, which were a national model, lost their funding in FY 2003. As a result, eleven Child Care Centers have shut down completely (and the federal funds for those Centers lost). Two are attempting to find funds to operate on a part-time basis.

C. SECURITY IN THE COURT HOUSE

Demeanor and Response of Court Officers. Respondents made many positive statements concerning court officers' attention to safety, practices in the courtroom and corridors, and treatment of parties. While study participants reported some problems in individual courts with the manner in which court officers respond to domestic violence issues or with their behavior in the courtrooms, especially in cases of gay or lesbian couples before the court, these concern were limited to particular places or staff and did not appear to be a systemic problem.

Availability of Security Personnel/Effects of Budget Constraints. There is a serious court officer staffing shortage throughout the state. The number of court officers has not kept pace with increased requirements, e.g., more judges,

increased jury sessions, Juvenile Court expansion, new buildings, and more holding areas. In fact, there has been a net loss of 118 court officers since March 1998 due to early retirement and normal attrition. Courts in Essex County have been particularly hard hit, with those in Suffolk not far behind. Minimum court officer coverage presents a difficult challenge in what amounts to a daily "distribution of shortages" mode. The Security Department and the court officers have responded to the challenge and, although risks have increased due to shortages, study participants report that court security personnel have managed to deter, respond to, and control security incidents.

The availability of associate court officers, who cover the security screening stations and administrative areas, improved in February 2003 with the recall of 26 officers who were laid off in March 2002. Most security screening stations now have adequate coverage and the officers assigned to them are better able to patrol administrative areas of the court buildings as a presence and deterrence.

However, there does remain a significant amount of concern over the pressures on the security forces and worry that the continuing state budget crisis may possibly result in future reductions in court officers, who staff the courtrooms and corridors outside of the courtrooms, and associate court officers, who staff the entrances to the court house and patrol the administrative areas.

Even without further reductions, many study participants noted a concern about safety. In some courts, particularly busy Probate and Family Courts, the sessions take place on different floors and it is impossible to have court officers cover all of the corridors as well as the courtrooms. For example, Middlesex Probate and Family Court not only has sessions on several different floors (including one courtroom reached only by a long trip through the court house basement), but also in a satellite court house across the street. There are also several three major waiting areas: outside of courtrooms, the Register's office, and the Department of Revenue offices. In addition, probation officers meet with parties all over the court house. A serious incident of violence could occur in any one of these places, so lack of coverage poses a realistic danger. This is of particular concern at hearings after notice when the defendant may have brought family or friends. With people usually standing right on top of each other in the corridors or waiting areas, a plaintiff might be confronted throughout the court house corridors by hostile and potentially threatening people.

There were also concerns in certain courts about safety in the clerk's or register's office. In some courts the clerk's office is removed from the courtrooms and even the main corridors and entrances so that there is limited security presence.

Best Practice. Many courts utilize emergency buzzers in their clerk's or register's office so that court officers and other security personnel can be immediately summoned.

In addition, not having enough court officers can lead to delay in having 209A complaints heard as judges cannot run a court session on such matters without a court officer present. With the need for court officers in lock-up, to respond to situations in the court house, and to staff a number of courtrooms, judges and court staff reported having to delay beginning a session to hear a 209A complaint until a court officer was available. (See *Section II. D.* below for discussion on delay engendered by need for court officers in lock ups).

The lack of court officers also makes it difficult to spare them to walk people to their cars or even to make sure they have an escort to the main doors when leaving the court house, a practice which many court staff, judges and advocates have indicated they would like to see in cases where there is an immediate concern for the plaintiff's safety.

Another issue that came up in a few areas was that the perimeter security personnel (at the doors and metal detectors) leave at 4:00 p.m. or 4:30 p.m. This will occur even when court is still in session, thus reducing the security in the court house. It was also noted that in certain areas of the state the courts are used for evening meetings (such as community meetings and support groups) and, in some cases, the courts are in the same buildings as other county offices which hold evening meetings.

As of this writing, there are still fifteen court buildings without security screening stations. The goal is to have such stations in every building. Progress has been made in that regard from just five buildings so equipped in 1993 to one hundred today. The incremental additions during that period have been and continue to be resource dependant.

Requesting Defendants Remain in Courtroom. There were sporadic reports

by study participants that court officers had indicated that they could not ask a defendant to stay in the courtroom while a plaintiff obtains copies of the order from the clerk's office. They stated that they had no authority to do so. In most courts, however, the court officers are willing to make this request of defendants. It is also clear that if the judge requests that the defendants be asked to wait, court officers will so ask. Additionally, although a court officer would not have the authority to hold a defendant who refused the wait, most report that those defendants asked by a court officer to wait in the courtroom comply with the request.

D. DELAYS AT COURT

Across the board, there were complaints that in many District Courts plaintiffs routinely have to wait in court two, three or four hours before their cases are heard. This complaint came not only from plaintiffs, advocates and attorneys but from court personnel who felt badly about the situation. While many people must wait at court for matters to be heard, delays of this nature are particularly burdensome to 209A plaintiffs. Unlike most other civil court matters and criminal trials which are scheduled in advance or only require the presence of attorneys, plaintiffs in 209A *ex parte* hearings have had little or no time in which to make arrangements necessary to spend hours at court. Advocates note that people leave before their complaints are heard as they have to get back to their children or a job. Some plaintiffs even have to leave as they cannot be away from home or work for so long without their batterer becoming suspicious of where they have been. Even hearings with notice only give the plaintiff a little more than a week to schedule babysitters and time off from work, something that may require more time. The long delays also mean that people are sitting in the intimidating venue of the court and may simply lose their nerve or feel that they are not considered an important concern of the justice system. Sitting in a court house corridor for hours also increases the number of people they might see, exacerbating the privacy and confidentiality concerns discussed above.

One repeated concern is that 209A plaintiffs have to wait to be heard until all arraignments are held. Many advocates concluded that this is due to a constitutional right to be arraigned immediately upon being brought to court and thus, because the courts are so concerned with the constitutional rights of defendants, the arraignments are held before any other court matters are heard. However, others indicate that this occurs because when there are people in lock-

up awaiting arraignment, a court officer must be present in the lock-up. The court wants to get all of the people out of lock-up so the court officers can be in other places in the court, including sessions that will then be able to hear 209A complaints.

Although it varies from court to court, the Probate and Family Courts are generally better able to expedite matters as there are no lock-ups requiring the presence of court officers (though court officers occasionally need to sit with a party who has been brought in from a prison or jail). Probate and Family Courts also often have a number of sessions running concurrently, whereas many small district courts only have one or two sessions running at a time. However, even in Probate and Family Courts, there were concerns about the length of the process. In particular, it was noted that delays can occur because litigants need to go to different offices for different tasks.

Best Practice. The Chief Probation Officer at a Probate and Family Court brought together staff from all of the offices that deal with any part of 209A orders (i.e. divorce counter, paternity office, probation, judicial secretaries, assistant registers) for a "walk-through" exercise. They entered the court house and followed the path of a person seeking a 209A order. By the end, staff acknowledged what a daunting task such a process could be and understood better why litigants were concerned about how long it took. Importantly, they also discovered areas where they were duplicating tasks and came up with ideas for simplifying and streamlining the process.

A commonly cited source of delay is the necessity of getting records from the Court Activity Records database (CARI), which includes the Statewide Registry of Civil Restraining Orders, and the Warrant Management System (WMS), which contains information on all outstanding warrants. As noted below in *Section II. F.*, staff in some courts reported that obtaining this information can take a significant amount of time. With the exception of two courts, however, all probation departments have virtually instant access to CARI on the internal Court Intranet system. No clerk's office personnel are authorized to have direct access to the CARI data base as it is a probation department function to submit, save and retrieve that information.

Best Practice In some courts the staff takes the defendant information even before the 209A complaint is completed so that they can obtain the necessary computer information while the plaintiff is completing the other forms.

One judge noted that perhaps the courts are deluding people in holding out the 209A order as something that can be obtained expeditiously. The forms are now complex, they cover many matters, and the ramifications of both allowing and denying complaints are great. People should be aware that time will be needed to complete all the forms, get all the necessary information and hold appropriate hearings. At least one plaintiff noted that getting her restraining order was important and she expected that it would take time. After all, just renewing her license took time and her restraining order complaint involved a much more important matter.

E. RETURN OF SERVICE

Requirement of Notice. While the court can hear a 209A complaint *ex parte* (without the other party present), it can only grant a short (usually ten days) abuse prevention order. Before a court can grant longer orders, the defendant must be given notice of the time and place of the hearing and the relief being requested by the plaintiff. The proof that such notice has occurred is a form entitled Return of Service which details where and when the police officer (or other designated person) gave the defendant a copy of the complaint, a copy of any *ex parte* order, and notice of the next hearing.

Some police stations do not promptly get the Returns back to the court or do not inform the courts in advance if there is a problem with making service (e.g. unable to locate the defendant which might allow a plaintiff to request service in some other fashion such as by certified mail, publication or at some other address). The courts do not routinely follow up on the return of service. When they do, some police departments are unable to tell the court if service has been made or if there was a problem with service. This results in many hearings having to be rescheduled, sometimes a number of times, a concern raised by both advocates and court staff. Both groups were concerned about the difficulties the plaintiffs experience when there are numerous court appearances (including the concern that some will give up and not come back) and the extra work placed on short-staffed courts.

Transmitting Orders for Service. There is an interesting debate going on about different processes for transmitting orders to police for service on the defendants. Some courts fax orders to police stations. Other courts take the position that the statute requires a certified copy be served and a fax cannot be used for service or return of service. In some courts, the orders for service are given to the plaintiff and she/he must take them to the police station. Some advocates felt that this placed an inappropriate logistical and emotional burden on plaintiffs. Another concern was that the plaintiff might alter the order, an occurrence which court staff and attorneys indicated has happened.

Out-of-State Service of Orders. Many court support staff expressed frustration in trying to get orders served out-of-state. It is often unclear who serves such orders in other states (police, sheriffs, constables) and if a fee is involved. It was suggested that more information for staff on this issue, perhaps a national directory accessible on the Internet, would be helpful, as well as some understanding between the states, particularly border states, regarding having orders served with no charge. A current interstate project may, in the near future, be able to provide the information about restraining order practice in other states. Representatives from the Trial Court and Jane Doe, Inc. are members of a Northeastern Regional Full Faith and Credit working group, formed and co-ordinated by the Center for Court Innovation to help states implement the full faith and credit provisions of the Violence Against Women Act. The working group is currently developing an interstate project to help victims of domestic violence who cross state lines to find safety. The information assembled by this working group will address many of the questions raised by the counter staff.

F. INFORMATION AVAILABLE TO COURT (DATA COLLECTION SYSTEMS, ETC.)

Complaints Denied. Many judges and others would like to see the CARI system expanded to include complaints that have been filed but denied. Currently information concerning a denied complaint is not entered in the CARI system. This would let a judge know when plaintiff is, after having been denied in one court, attempting to obtain an order from another division or department. For example, a plaintiff denied in a District Court on one day, may file a complaint in Probate and Family Court the next. Without a change in circumstances, such "forum shopping" is considered inappropriate. (Of course, unless the information is entered into the system during the day as orders are

issued, as opposed to the end of the day, this will not eliminate concern about the person who, after having a complaint denied in one court goes to another on the same day). Including this information in the CARI system would also let judges know when retaliatory complaints have been filed and denied. This information can give judges more insight into the family or individual dynamics at play that might be important in considering future extensions or modifications to orders.

Time Necessary to Obtain Information. Some court staff and other study participants indicated that it can take a significant amount of time to obtain information from CARI and the Warrant Management System. Specific problems include the number of computers in the court house, who has access to them and to which systems they have access. Study participants reported that there are systems to which the clerks' office has access, but not the probation office, and vice versa. The length of time necessary to obtain this information increases the time that plaintiffs must spend at court, exacerbating the earlier-discussed problems of child care, security, and privacy. In some cases, if the plaintiff has come to court in the afternoon, this delay might actually prevent him/her from having a hearing at court and they must be referred to the Judicial Response System. (See above at *Section I. B.)* A number of people also mentioned that on Mondays there is always a delay in getting CARI information.

> "There is a special place in hell for the persons who set up a free standing warrant management system separate from probation records."
>
> District Court Judge

Obtaining Plaintiff Records. A number of attorneys and advocates raised questions about the practice in many courts of pulling the records and probation files on both parties. They expressed concern that some plaintiffs are not treated as well or their testimony considered as credible as others because they have some form of a criminal record. However, others pointed out that if the records were not pulled on the plaintiff, a judge might not be aware of a previously existing 209A against the plaintiff. When a CARI check is done, only the defendant's criminal and civil 209A orders will appear under his/her name and date of birth. The system is not set up to link with plaintiff identifiers. This is critical in order to know if the new complaint is brought in retaliation and whether or not mutual orders might result from a new order. Some study participants questioned whether it might be possible to have a system that will provide information on the plaintiff's involvement in other 209A complaints, but not a full criminal record.

Information on Matters in Multiple Courts. A number of advocates, attorneys and court personnel indicated that parties are often involved in matters in a number of different courts and there should be a way for all courts to access this information. For example, one person might be involved in four different courts on related family matters, one District Court on a 209A complaint, another District Court on a criminal violation of the 209A order, a Probate and Family Court on a domestic relations matter and a Juvenile Court on a Care and Protection (C&P) or Child in Need of Services (CHINS) matter. Some of these cases may be filed in retaliation for others. An assistant district attorney who works in juvenile court indicated that it was not uncommon for a father to get back at a custodial mother who has taken out a restraining order by filing a CHINS complaint on one of their children. There is now no easy way for most court staff to obtain information about proceedings involving all or some of the parties in other courts.

This concern has been brought to the attention of the MassCourts Project, the Trial Court committee working on obtaining a new computer system for the courts. The committee has made it a priority for the new system to enable staff to obtain information about proceedings in all courts involving all or some of the parties in a given case. For example, one system considered assigned both individual and family identification numbers to each person involved in any case. These identification numbers would then be available to authorized persons in any court to access information on all matters related to both the individual and any involved family. A person will not be limited to one family identification number, as, for instance, a person who is the defendant in a restraining order case may also be the father of a child by another person and involved in a care and protection matter. This person would be listed under two different family identification numbers. To protect the privacy of all involved, the authority to obtain this information will need to be carefully monitored. This system is not perfect as it must, to a large extent, rely on the information given by parties. But this or a comparable system would address the concerns raised by many participants in this study.

G. DEMEANOR OF COURT STAFF

The response of court staff to plaintiffs in 209A cases is more appropriate than in the "old days" when plaintiffs were not taken seriously or were demeaned, but there are still concerns about such behavior in some places.

Concerns were raised about court officers chatting with the defendants, thus giving plaintiffs the impression that either the court officers knew the defendant and would "side" with him/her or the defendant had some kind of sway or influence at the court. Some who raised the issue acknowledged that the conversations may simply just be a passing comment between people who might know each other, a passing comment between people who do not know each other, or an attempt by the court officers to defuse a possibly volatile situation. Even so, they noted that in some cases such interaction had increased plaintiffs' worries about continuing with the court proceedings or caused plaintiffs to wonder if court personnel will take their concerns seriously. Such fears and concerns are often picked up on and exploited by batterers. In addition, if the batterer perceives such a conversation as an indicator of support, it could moderate his/her desire to alter his/her behavior.

Advocates also expressed concern over the response of some court personnel to cases involving same-sex relationships. While many respond appropriately, in other cases there are inappropriate comments or actions from court staff (both in the clerks' office and in the courtroom) ranging from expressions of surprise about the relationship, surprise that domestic violence can occur in such a relationship (particularly if the plaintiff and the defendant are both women), or literally and figuratively raised eyebrows and snickering (particularly if the plaintiff and defendant are both men). One advocate described court officers staring at the parties or acting as if they had the plague. Some court staff seem not to understand why a "guy just can't leave" even though they seem to understand the dynamics of abuse when the victim is a woman. These types of responses can lead a plaintiff to question what reception his/her complaint will get from the judge and whether or not the protections of the law are available to gay or lesbian plaintiffs. Added to the concerns that a plaintiff might already have about public revelation of his/her sexual orientation and the embarrassment of having to share intimate details of one's life, these reactions might lead plaintiffs to leave before their hearing or fail to appear at a subsequent hearing. If these experiences are shared with others, some gay and lesbian victims may decide not to seek court relief.

H. *PRO SE* LITIGANTS

See *Section I. A.* above about filling out forms.

Pro se or self-represented litigants present a significant challenge for judges. On one hand, they want to make sure that the parties before them know what is happening and that the court has the information necessary to make a decision. On the other hand, a judge must remain neutral and, thus, cannot seem to be prompting parties as to what steps they should take or to what they should testify.

Because there are fewer advocates in Probate and Family Court, concerns about *pro se* litigants are particularly significant when 209As are brought in those courts. In addition, when a 209A is brought in the Probate and Family Court and issues of visitation are addressed, all study participants agreed that the plaintiff's need for legal counsel is great. This is particularly true as the domestic violence presumption concerning custody and visitation might be a consideration in some cases (see *Section II. L*. below). *Pro se* litigants are usually unaware of this presumption or the need to present the evidence sufficient to allow the court to make findings that would trigger the presumption. However, even if there were more advocates in the Probate and Family Court, this would not address all of these concerns as advocates cannot make arguments to the court, draft proposed orders, or work with probation officers in the same manner as an attorney. They can be extremely helpful in preparing the parties as to what to expect and working with them to determine the relevant information that the court might need, but they cannot assume the full role of a lawyer. (See *Section III. C.* below for further discussion of *pro se* litigants in the Probate and Family Court).

It was also noted that the prevalence of *pro se* litigants can result in the dissatisfaction that many litigants feel with the court process. Many litigants come to court not knowing what to expect or how to obtain the results they seek. They may have unrealistic expectations of what the court can do for them. Even when advocates are available, as noted above, they may be unable to provide the same level of experience and understanding in assisting plaintiffs as a lawyer. Lawyers, often more experienced in the courts, may better know how to avoid the pitfalls and surmount problems. Lawyers can generally better prepare a client for court and explain what occurred at the hearing. Without this representation, litigants sometimes walk away from the court, having succeeded

in obtaining all remedies available, but feeling like they lost in one way or another.

I. CONDUCT OF THE HEARINGS

Judicial Demeanor. Study participants made many positive comments concerning judicial demeanor during 209A hearings. While there were certainly some complaints about judicial demeanor (such as rudeness, anger, coldness, or imperiousness), this does not seem to be a systemic problem. Most study participants reported that judicial demeanor in handling 209A orders is generally appropriate. The vast majority of concerns regarding hearings have to do with specific practices, as discussed below.

Hearings at the Bench. While many judges still conduct hearings, especially *ex parte* hearings, quietly at the bench, many attorneys and advocates indicated that some judges were requiring parties to stand in front of the bench and present their case in voices audible to the entire courtroom. As noted above, this can be disconcerting for many victims and particularly for those in same-sex relationships. (See *Section II. B* above). Advocates did acknowledge that when both parties are present, hearings at the bench might present a safety risk. Court staff, including judges, did express a concern that side-bar hearings brought the parties too close together, a situation that could be uncomfortable or even dangerous. Even with court officers between them, some distance was required for the safety of both the plaintiff and court staff. Some advocates indicated that they thought having plaintiffs testify aloud was prompted by the concern of judges for "everything to be on the record" (even though a hearing at the bench is still recorded) and "out in public." Indeed, some court staff and judges did express the concern that these were public proceedings and should not be heard in a seemingly furtive manner.

Information before the Judge. Some advocates and attorneys expressed a concern that some judges were making decisions on complaints without knowing all of the facts. This happens most frequently when a judge just reads the affidavit and does not question the plaintiff. Some people are not comfortable with or may not have the skills to put everything in writing - especially if they did not have the assistance of an advocate. Without follow-up questions from the court, the judge may not have sufficient information with which to make an adequate ruling or order.

Some attorneys did express the concern that some judges appear to take on the role of an advocate for the plaintiff. An example was given of a judge saying, after reading the affidavit and asking questions of the plaintiff, "You know, I cannot give you a 209A just because you don't want him coming to your place, you have to tell me that you are in fear." This highlights the difficult role judges must play when parties are not represented.

Concerns of Defendants. Defendants consistently indicated that they felt they were not listened to by anyone in the court and decidedly not listened to by the judge. Many stated that they never had a chance to really present their side of the story. Offers of evidence and witnesses were routinely rejected. Most felt that once the *ex parte* order was granted they were already judged as batterers. They also indicated that the courts were not willing to consider that women might be aggressors in some cases or that women might also be physically violent. It was noted that there appears to be a bit of a Catch 22 situation: advocates insist that batterers will always deny their conduct, so by implication, their very denial becomes proof that they are batterers.

J. RULINGS ON COMPLAINTS

Granting of Orders. It appears that most plaintiffs whose complaints allege the necessary relationship between the parties and actions which meets the statutory definition of abuse are obtaining some form of protective order. However, the granting of such orders is not automatic. Some complaints, although not many, are denied on the grounds of credibility of the allegations or the plaintiffs.

A particular circumstance noted by some advocates is the reluctance of some judges to issue a restraining order against someone who is incarcerated, based on the view that it is unnecessary. Advocates felt that this was inappropriate as a person may remain in fear even if their abuser is currently incarcerated. They may be concerned about an unexpected or earlier than anticipated release and not want to be in the position of trying to obtain an emergency or ex parte order on a moment's notice. (See *Section IV. H.* below for issues concerning notice of release). Advocates also noted that plaintiffs may be worried about the defendant trying to harm or intimidate them through third parties. Thus, incarceration should not automatically alleviate the need for a protective order. Other participants did note the case of Jordan v. Westfield Division of the

District Court Department et al, 425 Mass. 1016 (Rescript) in which an abuse prevention order was vacated as the defendant was in jail (albeit for convictions of kidnaping and assault and battery against the plaintiff) and the plaintiff did not allege nor produce evidence to warrant a finding by a preponderance of the evidence that, since his incarceration, defendant's words reasonably placed the plaintiff in fear of imminent serious physical injury. The Appeals Court did not rule out the possibility that, despite incarceration, there could be evidence that would warrant an 209A order, but noted that the defendant's incarceration during the entire time that the plaintiff alleged she was placed in fear indicated that the "imminence" of any serious physical harm was questionable and would need to be proven.

Standard of Proof. The number of orders granted raised concerns among some study participants. In particular, criminal defense attorneys and attorneys who represent defendants in 209A complaints and in domestic relations matters expressed concern that judges are not subjecting the complaints or the plaintiffs to any real scrutiny for either credibility or a preponderance of the evidence.

> "Some evidentiary standard and standard of proof needs to be used in ruling on 209A complaints. These are civil orders and a preponderance of evidence standard should be used. Questions need to be asked of the plaintiff to probe the credibility of their claims. Yet this rarely happens."
>
> Criminal defense

Many are concerned that judges issue orders to all plaintiffs in order to guard against bad press. The assumption is that no judge wants to be on the front page of the newspapers having denied an order in a case where subsequent violence occurs. In fact, some judges indicated that they make specific findings when they deny a complaint to protect themselves from such a situation. It was also suggested that judges are so concerned about such a situation that they are regularly issuing orders in cases which, even if the plaintiff is believed, do not meet the necessary statutory requirements for the issuance of orders. This may be because they are acting out of an excess of caution and, additionally, think the order will do no harm or cause any real inconvenience.

A number of people pointed to the recent Appeals Court case of Carroll v. Kartell, 56 Mass. App. 83 (2002) as one such case. In this case, the plaintiff was demonstrably afraid of the defendant, but she was unable to identify any particular menacing language or gesture suggesting she was in imminent peril

of physical harm. The Appeals Court, applying the proper standard for issuance of an order (whether a plaintiff's apprehension that force may be used is reasonable), held that the order should not have issued.

It is unclear if the granting of orders in cases that do not satisfy statutory standards is rare or common. It did appear that most of the complaints concerning the issuance of too many 209As were directed to the concern that the judges are not scrutinizing the credibility of the plaintiffs as opposed to claiming that the courts are issuing orders in circumstances not permissible under the statute.

It is important to note that a number of judges related that they have become aware of how serious issuing a restraining order against a person can be, particularly noting the effect it may have on future employment, military service, etc. This understanding guards against them feeling that they should just grant all the complaints because it does no harm.

Same-Sex Relationships. Advocates noted a tendency of judges (as well as other court staff) to try to closely analogize gay and lesbian relationships to heterosexual ones. In such cases, there is an effort to assign the role of the "man" to the party who appears to be "butch" and the role of the "woman" to the party who appears to be "femme" and then to analogize the relationship to one with which they are more familiar with the "man" as the abuser and the "woman" as the victim. These stereotypes and analogies are not appropriate and often do not present an accurate picture of the relationship. There is also the feeling among advocates that gay men need to show more "evidence" or suffer greater harm than women to be granted a restraining order.

It was also noted that sexual abuse in a same-sex relationship is particularly hard for many judges to understand, leading questions such as "What do you mean you were raped? How could you be raped?" (It was noted that the word rape is conclusive and the plaintiff should have just told the judge what had occurred.).

Specifics of Orders. Generally, advocates for plaintiffs did not raise particular concerns about refrain from abuse, stay away or no contact orders. However, some felt that judges need to inquire further about the specifics of work and

home, so as to craft an order that is appropriate and provides all necessary protection. Attorneys for defendants pointed out that the judges should make this inquiry of both parties so as not to craft an order that is impossible for the defendant to obey; for example, stay away orders with long distances were mentioned as a significant problem when the parties lived, worked and socialized in the same neighborhoods.

Show Cause Hearings. Advocates in certain counties were very distressed over an expanding practice of judges ordering "show cause" hearings rather than issuing an *ex parte* order. In these cases, the matter is set for a hearing in which the plaintiff must return to "show cause" for an order to issue. The defendant receives notice of the complaint, the hearing date, and the relief being requested. The advocates indicated that this was occurring in cases where there were safety concerns. Some plaintiffs dropped the matter rather than risk the retribution that might follow the receipt of such a show cause notice.

Interestingly, show cause hearings were pointed to by two judges as a good practice when there was not sufficient evidence to issue an *ex parte* order or an order after hearing but where the judges felt that bringing the parties together may help them address problematic issues. An example was given of a father trying to bring a restraining order against a son when the real issue was the son not getting a job and contributing to the household.

Mutual Orders. Mutual orders remain a dilemma for both litigants and judges. A number of advocates and attorneys indicated that in many cases, judges are not making the findings required by statute when issuing mutual orders. M.G.L. c. 209A, sec. 3; *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 6:07. Some court staff felt that neither the statute nor case law provided enough direction as to what is meant by the statutory requirement that the "court provide a detailed order, sufficiently specific to apprise any law officer as to which of the parties has violated the order, if the parties are in or appear to be in violation of the order." As many mutual orders include language that both parties keep a certain distance away from each other, it is unclear what sort of detail would allow a police officer, especially if responding in a public place, to determine which party is in violation.

It was also reported that there seemed to be a greater prevalence of mutual orders given in same-sex relationship cases, particularly when both parties are

male. An example was given in which a judge issued three-month mutual orders. At the three-month hearing, both orders were vacated and the judge asked the parties to shake hands like gentlemen.

Judges and advocates also expressed concern that, on some occasions, what are essentially mutual orders are being granted in different courts, without the second court being aware of the issuance of an order by another court. A number of study participants indicated that they knew of cases in which a defendant against whom a 209A order had issued in a District Court had immediately gone to Probate and Family Court, filed a 209A complaint and, in some cases, obtained an *ex parte* order without the Probate and Family Judge being aware of the District Court order. This results from the inability to check whether an order has been granted in another court that day, but has not yet been entered in the CARI system.

Extension of Orders and Permanent Orders. Advocates and attorneys expressed concern that many judges will not extend an order or issue a permanent order if, over the previous year, there had been "no problem" during the duration of the order. M.G.L. c. 209A, sec. 3 specifically states that "the fact that abuse has not occurred during the pendency of the order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, or allowing the order to expire or be vacated, or for refusing to issue a new order." The only criterion is a showing of the continued need for the order. Study participants noted that in such cases, these judges are not using the standard of, or inquiring into, the plaintiff's continuing fears.

K. District Court "Referrals" to Probate and Family Court

***Ex Parte* Hearing.** There were some reports of District Court judges issuing plaintiffs an emergency order, then telling them not to bother showing up at the hearing after notice, but instead to file a new matter at Probate and Family Court. Some District Court judges try to make their *ex parte* orders returnable for the hearing after notice in Probate and Family Court, which statutorily and procedurally cannot be done.

As many parties with children or who wish to pursue a divorce will eventually end up in Probate and Family Court, a number of judges and attorneys expressed interest in exploring some statutory changes that might address this matter. Such a change could allow District Court *ex parte* to be returnable for

the hearing after notice in the Probate and Family Court or could provide a mechanism to transfer a case to Probate and Family Court without the plaintiff having to start anew, requiring all new forms and a new case file. Study participants did indicate that there would need to be considerable discussion on the pros and cons of any such change and issues such as requiring the consent of the plaintiff or limiting the process to cases in which there was already a Probate and Family Court matter pending need to be carefully explored. (See further discussion at *Section III. G.* below).

Hearings After Notice. Similarly some District Court judges, after holding a hearing after notice, are giving short-term orders (one to three months) telling the parties to file an action in Probate and Family Court. These are often the cases in which the plaintiff has requested child support. The judge will grant the short-term restraining order, but refuse to grant child support, telling the plaintiff to file some form of complaint requesting child support in the Probate and Family Court. (See *Section II. M. 1.* below). In some instances, the parties may already have a domestic relations matter pending in Probate and Family Court and, in such cases, people had fewer, though still some, concerns about the granting of a short-term order. However, it was reported that the District Court short-term orders often occur in cases in which the parties have no Probate and Family Court case pending and would need to file a new action.

Short-term orders can result in parties going back and forth between the courts a number of times. Examples were given of a District Court judge giving an order lasting four to eight weeks and instructing the plaintiff to go to Probate and Family Court to file some form of a domestic relations complaint, such as divorce, paternity, custody, or support. The plaintiff might not be successful in actually filing the action, having it served and obtaining a Probate and Family Court order during such a limited time period. In fact, even where there is a pending case it might not be possible to have a motion on child support heard quickly enough. Accordingly, the plaintiff must return to the District Court, where the judge gives another order for only a month and again gives no child support. Attorneys and advocates felt that this reflects little or no concern about how emotionally difficult it is to come to court, not to mention the burden caused due to the logistical issues of travel, child care, and the loss of work.

L. CUSTODY/VISITATION

In 1998, M.G.L. c. 209A, sec. 3 was amended to include certain custody and visitation presumptions when the 209A complaint is brought in the Probate and Family Court. This legislation also amended the divorce statutes, adding the same language. M.G.L. c. 208, sec. 31A. Accordingly, a finding by a preponderance of evidence that a pattern or serious incident of abuse toward a parent or child has occurred, creates a rebuttable presumption that it is not in the best interest of the child to be placed in sole custody, shared legal custody or shared physical custody of the abusive parent. This presumption can only be rebutted if the court finds by a preponderance of the evidence that the award of any form of custody to the batterer is in the best interests of the child. If there is a finding that a pattern or serious incident of abuse toward a parent or child has occurred and the court issues a temporary or permanent order of custody, regardless of to which parent, the court shall within 90 days enter written findings of fact. These findings of fact must address the effect of the abuse on the child and must demonstrate that the custody order is in the child's best interest and provides for the safety and well-being of the child. These findings must be made even if the court is granting sole custody to the non-abusive parent. If ordering visitation for the child, the court is required to provide for the safety and well-being of the child and the safety of the abused parent. The court may consider a number of different visitation requirements such as exchanges in a protected setting, supervision, attendance at a batterers' intervention program as a condition of visitation, restriction of overnight visits, and the posting of bonds.

It was noted that the portion of the 1998 amendment which addressed the rebuttable presumption concerning custody is somewhat confusing, as under 209A the court does not appear to have the authority to grant custody to anyone but the plaintiff.

However, the presumption clearly applies to visitation orders issued by a Probate and Family Court under a 209A complaint. It was noted that the majority of complainants did want their children to have some form of visitation. Some judges estimated it at 80%. However, as many attorneys indicated, even in cases where the victim supports continued contact between the child and the other parent, there are often issues concerning the most appropriate form of visitation. Most attorneys and advocates agree that the presumption statute is little used in the Probate and Family Court, but differ as

to the reasons why. Please see *Sections III. J and K* for a more detailed discussion of this issue.

Even without a finding which might trigger such a presumption, Probate and Family Court judges can structure visitation in a number of different ways, make use of supervised visitation centers, and/or require participation in batterers' intervention programs as a requirement for visitation under a 209A order. As will be discussed in more detail in *Section III. J. and K.* below, attorneys, advocates and litigants felt that these resources or requirements are little used.

A single justice of the Supreme Judicial Court has ruled that the District Court lacks the jurisdiction to order visitation in a 209A proceeding. Nazarro v. Justices of the Southern Essex Division of the District Court, et al No. 86-429. This appears also to apply to the Superior Court and the Boston Municipal Court. Pursuant to the *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 6:06**,** the District, Superior or Boston Municipal Court judge may allow the parties to discuss and agree to visitation while they are before the court. This should occur only if the plaintiff fully and freely consents to the discussion and visitation agreement. The judge must make a separate determination that the visitation arrangement will not expose the plaintiff to any harm or danger of harm. The agreement is also not part of the 209A order. Several attorneys and advocates expressed deep concern that some District Court judges bring a great deal of pressure to bear on the plaintiffs to reach such agreements. One attorney ironically noted that she had more and more cases in which District Court judges were refusing to order child support, which is clearly under their purview (see *Section II. M. 1*. for discussion on the issuance of orders of child support by the District Court), but so pressured the plaintiffs to reach agreements on visitation, that they were essentially ordering visitation.

A number of participants were asked whether or not allowing District Courts to order visitation would be beneficial. Most felt that the District Court lacked the appropriate staff and services to make those decisions. Some, however, indicated that this might be worth exploring. An important consideration was that it could potentially limit the number of courts in which people might have to appear. For example, it might prevent a batterer from going to Probate and Family Court for visitation, forcing the plaintiff to come to additional court hearings, perhaps in a court to which travel is difficult, or into litigating a divorce, separation or paternity action for which they are not ready. One senior

court staff person also indicated that the District Court judges often saw parties at their worst and, thus, the appropriateness of visitation for batterers might be more accurately judged in those circumstances rather than two or three weeks later when the batterer has "cleaned up" and is presenting a carefully modulated face to Probate and Family Court. It was also suggested that allowing the District Court to order visitation could ease the potentially angry response from a defendant, who has been removed from the home, told to pay child support but then told the court has no authority to allow him to see his children.

M. FINANCIAL ISSUES

1. Child support

District Court. One of the most frequent and most serious concerns raised was that many District Courts simply will not issue child support orders as part of a 209A order. For some plaintiffs, a child support order is absolutely necessary to establish financial security necessary to leave an abusive situation. In some cases, victims would feel the pressure to return to their abuser if they felt their child were suffering due to financial deprivations.

A number of reasons for the failure of some District Courts to award child support were raised, while other study participants questioned these reasons:

- **Personnel/experience.** District Court judges noted the lack of courtroom and court house support and expertise that would allow them to make such orders. In particular, they pointed to the lack of staff to prepare the child support guidelines worksheets. Judges were concerned that if the parties are not represented and there are no other staff available, they will have to complete the child support worksheets themselves, causing significant delay, effecting all plaintiffs and the entire system already struggling to handle a large number of cases each day.

  Judges also indicated that they rarely have sufficient information concerning the parties' income to allow them to complete the worksheets. They noted that during a heated hearing on abuse getting accurate financial information is difficult. Attorneys suggested that this concern could be met by judges requiring parties to bring this information to the next hearing under Box 13 of the 209A order form (a

blank line for judges to add to the order) or by adding a check off on the form or notice of hearing with such a requirement. (See *Section I. A.* above).

Some judges reported that they are hesitant to order child support as they have been told they were not meeting child support guidelines, requirements for wage assignments, or other requirements. Some attorneys, judges and court staff noted that the District Courts do not even have all of the forms available to adequately address the issue of child support such as financial statements, child support guidelines, work sheets, or wage assignment forms.

It was noted that D.O.R. used to have staff in the District Court to assist in child support determination but that, due to budget constraints, D.O.R. staff now only operate in Probate and Family Court.

- **Safety concerns.** Another concern raised by some judges was that after someone has just been ordered out of his or her house and told that the District Court cannot allow him/her visitation with their children, to then tell them that they had to pay child support would seem like they were piling on adverse consequences. They worried that this could exacerbate an already potentially dangerous situation. Some judges felt that even having a child support hearing at that time was emotionally difficult for all involved. Advocates and attorneys argued that plaintiffs should make the decision whether or not to take this risk.

- **Enforcement of child support orders.** As discussed below in *Section IV. K.* below, judges, advocates and attorneys all expressed concerns about the ability of the District Court to adequately enforce any of its non-criminal orders through civil contempt proceedings. As wage assignments are not available or fool proof in many cases (i.e. defendants who are self-employed, paid under the table or who change jobs frequently), this was cited as a reason the District Court should not be ordering child support. Others, however, argue that as this is a concern that applies to a number of potential 209A violations, the remedy should be to develop a simple and accessible procedure for handling civil contempts in the District Court, not to deprive plaintiffs of their right to obtain relief allowed under the statute.

Referral of issue to Probate and Family Court. For one or more of the above cited reasons, it was felt by some court staff and judges that Probate and Family Courts are better able to address the issue of child support. There may, however, be some misunderstanding of the resources available in Probate and Family Court. One District Court judge stated that in Probate and Family Court the plaintiff would have a lawyer and, even if not, wage information would be subpoenaed in from employers. Advocates, *pro bono* attorney groups, legal service attorneys and others who practice in Probate and Family Court have indicated this is often not the case. Many parties are forced to proceed *pro se* in the Probate and Family Court. The Court itself does not subpoena wage records and, without representation, this rarely occurs.

Resources that are available to issue orders. Some District Courts do regularly issue child support orders and can serve as a model to other courts. Some judges have also noted that before the enactment of M.G.L. c. 209C in 1986, paternity actions were brought as criminal matters in the District Court and in those cases judges regularly made child support orders. In some District Courts, advocates assist the plaintiff in completing the child support guidelines forms. Judges and others also noted that there are software programs available to assist judges. The Department of Revenue has an on-line program on its website which can be used to calculate the child support guidelines by simply plugging in a few numbers. Finally, some judges noted that District Court staff already have experience in getting financial information and making payment orders in the cases of small claims judgments and other civil awards when defendants are unable to pay the full amount of an award and have to pay over time.

Probate and Family Court. Some Probate and Family court judges will not grant child support as part of a 209A order, telling the plaintiff that they need to file a complaint for support, separate support, divorce or paternity. One of the concerns specifically raised by judges and court staff was that awarding support under a 209A complaint was not advisable as many plaintiffs do not extend or request vacation of the 209A order and are left with no child support. In addition, these judges and court staff indicated that many plaintiffs are unaware that the child support order will expire if the 209A is not extended or vacated for any reason, including the plaintiff simply not appearing at a hearing to determine if the 209A order should be extended. By seeking a child support award under a domestic relations complaint, the plaintiff is protected from the

support order lapsing due to inaction or a failure to understand the import of not extending or vacating a 209A order. One assistant register expressed a contrary concern that the 209A order might be vacated and along with it the child support order, but the defendant is unable to easily stop the wage assignment.

It was also noted that, in contrast to the situation when child support is not awarded in a District Court 209A hearing, when a plaintiff is already in Probate and Family Court, the burden of filing a complaint for child support is less onerous as the person is already at the court. Additionally, the concern often mentioned in the District Court situation, that forcing a plaintiff to file an action in Probate and Family Court increases the risk of retaliatory visitation and custody complaints, is not a factor, as both parties are already in the Probate and Family Court and, in fact, visitation can be requested under the Probate and Family Court 209A action itself. On the other hand, insisting that plaintiffs file a separate domestic relations complaint results in an often *pro se* plaintiff having to complete additional forms, perhaps pay a filing fee, arrange for service and, potentially, attend additional hearings.

Extent of Problem. A number of judges said that very few plaintiffs request child support orders and some felt the number asking was decreasing. Advocates did indicate that many plaintiffs did not want to request child support at the time they file the 209A complaint. These plaintiffs feel that they want to take the process one step at a time, fear that requesting support could exacerbate the situation or do not, at the time, have the stamina to seek support. Advocates also noted that some plaintiffs do not request child support as the advocate has already indicated to them that the particular judge or court they are before will not make such awards.

2. Spousal Support

Advocates and attorneys report that spousal support is almost never requested or given.

3. Damages

Although compensation for financial losses suffered or that will be incurred as a result of the abuse (see M.G.L. c. 209, sec. 3) is sometimes requested, it is rarely allowed. The most common request is for funds to change locks. Other requests include compensation for property damage (often slashed tires or other

damage to an automobile), restoring utilities and moving expenses. Advocates reported that there are a few requests for lost wages and medical expenses.

The reluctance of courts to issue such awards appears to stem from the concern that 209A hearings could become small claims hearings with the court required to assess values of items or appropriate compensation, develop a payment plan, and enforce through civil contempt hearings. A number of court personnel indicated they were not even sure who in the court should be assisting the judge in these matters, whether it should be staff from the clerks' office or from probation. Probation officers indicated they often end up handling these matters as no one else will, but do so without clear direction from the court. They do their best, but feel stymied by the lack of a clear and simple civil contempt procedure to respond to violations. (See *Section IV. K.* below).

Victim-witness advocates also noted that if a judge knows that a plaintiff has received compensation or had bills paid under the Victim Compensation Program (administered through the Office of the Attorney General's Victim Compensation and Assistance Division), she/he will often refuse to order the defendant to pay restitution even though the Commonwealth has the right to be repaid the amounts it has already disbursed if such restitution was ordered. M.G.L. c. 258C, secs.10, 11. Advocates also noted that damages or restitution are never ordered when a defendant is going to jail even though the defendant might have funds in his or her name and the victim has been left with bills or losses she/he cannot afford to cover. The judges appear to look upon restitution or damages as a fine or punishment not warranted if the person is sentenced to jail time, rather than as a means to make the victim whole. It is important to note that this attitude or approach is not unique to domestic violence cases.

4. Attorneys' Fees

Although both the statute (M.G.L. c. 209A, sec. 3(e)) and the *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 6:00 provide that a court may order the defendant to pay the plaintiff's reasonable attorneys' fees, the 209A complaint form does not specifically reference attorneys' fees. The complaint only includes a broader statement that requests that the defendant pay the plaintiff a certain amount in compensation for the "losses suffered as a direct result of the abuse", which the plaintiff must detail. It is unclear whether a *pro se* plaintiff realizes that this could include payment of attorney's fees and might, therefore, seek an attorney who might be willing to pursue such fees.

Attorneys reported that on the rare occasions that plaintiffs are represented and attorney's fees are requested, the request is usually denied.

N. SERVICES/PROGRAMS/REFERRALS FOR DEFENDANTS

In addition to the expressed concern that plaintiffs in 209A cases and plaintiffs in other domestic relations need advocates or attorneys, many study participants also expressed the concern that most defendants do not have attorneys, do not understand the process, and do not fully understand the orders. Even though judges usually go through the provisions of the order with the parties, the defendant might not, due to the stress of being in the courtroom, grasp all the statements of the judge or feel confident enough to ask questions. This is particularly true for defendants who might not be completely fluent in English (but who are proficient enough not to have asked for an interpreter) and those who may have impaired verbal skills or reading ability. There is also the concern that the appearance of justice is lost when there are advocates and services for plaintiffs in the court but often no one who will even speak to the defendants.

Best Practices: Two relatively new programs, one in Hampshire Probate and Family Court and one in Dorchester District Court, merit specific note. These programs provide information to defendants in 209A cases regarding what will occur in court that day, an explanation of what a restraining order means (including detailed discussion on what is and is not permissible under a particular order), and information about future court procedures. They may also provide referrals to a range of services, including batterers' intervention programs, shelter (for persons who must leave their homes), educational/job training, and substance abuse treatment. A similar program is beginning in Orange District Court. Study participants indicated that such programs, by clarifying orders, providing concrete referrals, and potentially diminishing the rage of a defendant benefitted plaintiffs as well as defendants. They also allow the courts to avoid an appearance of partiality which may arise by the presence of advocates for victims but no services for the defendants.

Both advocates and attorneys for plaintiffs reported that pursuant to M.G.L. c. 209A, sec. 3(i), some District Court judges will, as part of a restraining order, make a recommendation that the defendant attend a batterers' intervention program, but that this does not occur often. Batterers' intervention programs can be required by the Probate and Family Court when ordering visitation under a 209A complaint, but again advocates and attorneys for plaintiffs indicate that this rarely happens. The bulk of referrals to batterers' intervention programs come from sentencing in criminal cases. (See *Section IV. E.* below).

Some advocates and attorneys raised the need for judges to make recommendations about substance abuse treatment and for Probate and Family Court judges to make visitation contingent on such treatment. Although there is general agreement that substance abuse does not "cause" domestic violence, it is difficult for the issues of domestic violence to be addressed when there is an untreated substance abuse problem.

A criminal defense attorney noted that another good referral is the Fatherhood Program run out of Roxbury District Court. There are similar programs in other courts. This attorney noted that his clients who had gone through this program felt it addressed their concerns, their short comings, and their needs without requiring confessions with which they were not comfortable. However, another study participant indicated that it must be made clear that this program is not designed to address issues of domestic violence and should not be considered a substitute for a certified batterers' intervention program.

O. VACATING ORDERS

A number of study participants noted positively that, before vacating an order, judges are making sure the plaintiff understands that specific portions can be vacated while others remain in force and that they can come back to court for a new order if there are future concerns. As noted in *Section II. A*. above, if a plaintiff comes to court to vacate an order, meeting with an advocate can be critical. The advocate can prepare the plaintiff for the hearing and make sure she/he understands the implications of the request and the resulting order.

In addressing the demeanor of other court staff in such instances, the comments were generally positive. However, there were some comments that staff expressed exasperation with women who got orders and then came in to vacate them, either expressing that the situation had either not deserved an order in the

first place or that the plaintiff does not know what she/he is doing now.

P. Issues for Linguistic Minorities

Just about every focus group and interview raised concerns about the provisions of court interpreters.

Availability and Provision of Services. Of pressing concern is the general lack of availability of interpreters for all court hearings. Although this problem has become more serious over the past eighteen months due to budget constraints, many study participants indicated that the availability was problematic even before the current fiscal crisis. There have been problems both with finding interpreters for emergency hearings and with those scheduled for ten day or other hearings not appearing.

Another problem has been the new procedure under which one now must request an interpreter for morning or afternoon coverage rather than for a full day. This has resulted in situations where an interpreter is scheduled for a morning session and, if the case is delayed beyond noon, leaves, sometimes requiring the plaintiff to return to court another day.

The Office of Court Interpreter Services (OCIS) has been actively responding to this concern. For example, in an effort to conserve interpreter services, OCIS has instituted a process in which courts are provided information detailing which interpreters are already scheduled in a court for the coming weeks. Court staff can use that information to schedule new cases needing interpreters in particular languages for time periods when they know such an interpreter will be present.

Advocates noted that many litigants may have some proficiency in English but not sufficient to fully understand what is being said in the courtroom (as even those who are fluent in English often have trouble following what is happening) or to provide all the necessary information. However, not knowing they are entitled to an interpreter, or perhaps being embarrassed or ashamed to ask, individuals often go through the court process only half understanding what is happening. The advocates were concerned that there is no screening procedure for determining who needs an interpreter, a process that might assist such people.

Among advocates involved with linguistic minorities there was a real resentment of the burden placed on their constituencies. They felt they were put in the position of begging for what should be a basic right, the ability to address and seek redress from the court.

> "The courts need to understand that it is not a favor to have an interpreter service. Clients have the right to understand and to be understood."
>
> Advocate

Some participants expressed concern with the practice of having the same person translate for both sides. Some felt that this may conflict with the need for the interpreter to appear impartial. On the other hand, it was pointed out that if an interpreter simply does his or her job, interpreting what each party is saying, this should not be a problem. However, often the interpreter is doing much more than just interpreting in the courtroom. She/he is assisting in the completion of forms, explaining the forms to both parties, acting as interpreter between the plaintiff and an advocate, acting as interpreter between the defendant and court staff, and reviewing the order. With only one interpreter, they are often hard pressed to provide these services to the plaintiff and defendant at the same time. The other concern was that the effort to keep the parties apart in the courtroom often results in an interpreter running back and forth between them. Another problem is that when the judge addresses a party, the interpreter stands next to and speaks quietly into the ear of the person being addressed. As a result, the other party cannot understand what the judge is saying.

Use of Court Personnel. Over the past decade, the courts have made an effort to hire staff fluent in a number of languages. It can be tempting to try to press such staff into service as interpreters. However, in one court where a judge called upon probation officers to interpret, a grievance was filed by the probation officers both because interpretation was beyond of their job description and the concern that a conflict could exist if the matter became one of their probation cases.

Use of Advocates. As noted above, some courts have become more reliant on battered women's programs or advocates to provide interpreters. (See *Section I. H.* above). However, again limitations on staff limits the number of languages which can be represented. Advocates related that at times the court will request a Spanish-speaking advocate to attempt to interpret for Portugese- or French-speaking parties, a clearly inappropriate practice. Some advocates also felt that, when called upon to interpret in court, conflict can arise between advocating for

their client and stringently interpreting for the court. One advocate related a story of how during a hearing in which she was both advocating for the plaintiff and interpreting, the plaintiff responded to a question by telling her about certain sexual abuse but then begging her not to tell it to the judge. Having just taken an oath to interpret all that was said, the advocate felt in a real bind.

Quality. Most of the regular or staff interpreters, especially the Spanish interpreters, were described as appropriate and professional. However, the quality of other interpreters in domestic violence cases was questioned. These problems seemed more likely to occur in less common languages. The languages in which problems were noted were Haitian Creole, certain Asian or Southeastern Asian languages, and Somali.

> "I was presiding over a 209A hearing in which the parties spoke Khmer. In the middle of the hearing a person who happened to be in the courtroom and who spoke Khmer stood up and said "Judge, the interpreter is not telling you what the woman is saying and he is telling her that she is shaming her family being here." I would have never known this if this person had not been in the courtroom by chance."
>
> District Court Judge

Examples were given of interpreters not providing the full information to the court, giving advice to the plaintiff, and chatting to the defendant, thus upsetting the plaintiff. Many people indicated that some interpreters bring cultural biases to these cases and a number of examples were given in which interpreters tried to dissuade women from going forward on complaints, failed to include information which they thought was shaming to the family, repeated information from the hearings to the parties' community, or openly sympathized with the defendant.

In some cases, it was unclear as to whether the problem was bias or simply poor translating. A Spanish speaking probation officer reported often hearing mistranslations in court and gave a particular example in which a defendant, in response to a judge ordering a batterers' intervention program, said that he wasn't going to spend his money on something like that. The interpreter stated to the court that the defendant said he did not have the money for the program.

Complaint Process. The Office of Court Interpreter Services (OCIS) will review any complaints made concerning interpreters and has acted to remove interpreters based on such complaints. However, a lack of knowledge about how to make such complaints known and a lack of willingness or ability to follow through on complaints stymies such action. Parties will sometimes

telephone the OCIS with complaints, but are then reluctant to put the complaint in writing. Most advocates and court staff indicated that they have no idea of how to go about making a complaint or to whom a complaint should be made. Pursuant to statute M.G.L. c. 221C, the Committee for the Administration of Interpreters has been working, over the past several years, to draft a Standards and Procedures manual. The manual went out for public comment at the beginning of 2003 and the final Standards and Procedures were promulgated in April 2003. The manual codifies procedure, including the process for complaint and removal, and provides judges, attorneys, interpreters and other court personnel with important information about accessing, using and providing quality interpreter services.

Trainings. There have been specific trainings done with interpreters. The last Trial Court system-wide trainings on domestic violence were in 1996. Some of the interpreters who had to travel a distance may not have attended. There was a more recent Office of Court Interpreters training for Russian and other Slavic language interpreters. This mandatory training, organized with advocates who served this population, took place after a complaint was made concerning behavior by an interpreter which raised the appearance of bias. However, since that time there is turnover in the interpreters (i.e. a new Russian interpreter has been identified in Springfield, but who may not have attended the domestic violence training). There was also a training for American Sign Language interpreters that was funded with a Violence Against Women Act federal grant. The Interpreter Services is very open to providing training and the interpreters themselves appreciate it, so a more organized and frequent training schedule would be possible.

III. ISSUES WHICH ARISE IN PROBATE AND FAMILY COURT DOMESTIC RELATIONS CASES WHICH INVOLVE DOMESTIC VIOLENCE

A. FORMS

All of the domestic relations forms are widely described as being too complicated. But particularly noted as difficult for *pro se* plaintiffs are the financial statement (promulgated by the Probate and Family Court) and the Affidavit Disclosing Care or Custody Proceedings (promulgated by the Administrative Office of the Trial Court) (see *Section I. A.* above). The Probate

and Family Court has developed a pamphlet to assist *pro se* litigants in completing the financial statement which is of some assistance.

The 1999 Probate and Family Court Department *Pro Se* Committee report *Pro Se* Litigants: The Challenge of the Future has specific recommendations on simplifying all forms. The Probate and Family Court currently has all forms under review both to address the proposals of the *Pro Se* Committee and to modify forms so that they can be posted and utilized on the Internet. As noted by a number of court staff, the revision of forms is not a simple process. There are often competing goals, such as wanting as much information as possible for the court versus developing forms simple enough for pro se litigants to complete.
In a number of courts, the packet of divorce papers given to litigants does not include affidavits of indigency. The information about the affidavit of indigency and the indigency forms were posted in some courts; however, they were reported to be about ten feet off the ground.

Concerns about the Guardian of Minor forms were also raised by a number of study participants as domestic violence victims who are involved with the Department of Social Services or who are trying to find a safe place for their children sometimes resort to guardianships. This is often done *pro se* and the forms do not inform the parties what needs to be shown to have such a guardianship vacated if there is a later dispute between the parent and the guardian.

The Probate and Family Court has contracted with a vendor to develop an interactive on-line program for preparing the forms for guardianship proceedings. The hope is that such a program can be modified for the forms for other proceedings such as 209A complaints.

B. ROLE OF ADVOCATES

When a victim of domestic violence is filing a domestic relations complaint (e.g. divorce, custody, support, paternity), advocates can perform some of the same services of support, referral, and assistance with completion of forms as they do in 209A complaints. However, many Probate and Family Courts have no advocates and many (judges, advocates and court staff) pointed to this as a real problem in having matters heard expeditiously, in reducing the burden on court staff, and in assisting plaintiffs to understand the process and their rights.

The lack of advocates in Probate and Family Court is particularly noted in counties where a substantial portion of the advocate services are through District Attorney victim-witness advocates programs. It was noted by some court personnel that District Attorney victim-witness advocates are often reluctant to come to Probate and Family Court, but pointed to Norfolk County as an example where it is done and seems to work well. However, even when available, it is unclear how large a role advocates can play in the actual court process in divorce, custody, paternity, or support cases.

C. *PRO SE* LITIGANTS

There was general agreement that more lawyers are needed in Probate and Family Court matters. As important as the services which advocates provide are, even if there were a sufficient number of advocates in Probate and Family Courts, they do not have the training or expertise to appropriately assist victims of domestic violence in domestic relations matters such as divorce, separate support, custody, visitation, paternity, etc. These parties need lawyers for such "long haul issues." Unfortunately, legal service programs do not have sufficient resources to represent all those who meet their guidelines, and many are turned away because they do not meet the strict income limits even though they lack sufficient funds to hire an attorney. A few programs recruit *pro bono* or reduced-fee attorneys for such cases, but recruitment for domestic violence cases is extremely difficult and the demand far exceeds the supply. Some study participants suggested that allowing discrete task representation (allowing attorneys to represent a person on one aspect of a case such as visitation or custody, but not requiring that they become the attorney of record on the entire matter) might increase the number of *pro bono* attorneys willing to handle domestic violence matters.

The courts are well aware of problems facing *pro se* litigants and have been working to address the many issues raised. As noted above, the Probate and Family Court convened a *Pro Se* Committee which in 1999 issued a report, *Pro Se* Litigants: The Challenge of the Future. In 2001 the Trial Court held an all court conference on *pro se* issues. Following both the report and the conference, the Probate and Family Court has appointed a *pro se* coordinator who, among other things, has developed some short pamphlets in English and Spanish on appropriate conduct in court, the role of court staff, and finding legal assistance. These pamphlets and some other basic information are posted in a Self-Help Center found on the Administrative Office of the Trial Court Web

Site. In 2002, the Judicial Institute presented a two day program, Assisting *Pro Se* Litigants: A Program for Registry Personnel. (See *Sections I. A. and III. A.* above for discussion of forms).

"Lawyer for the day" programs have been extremely helpful in many Probate and Family Courts. In some courts, they are organized by court staff and in others by local bar associations. Under such a program, family law attorneys volunteer their services in court one or two days a year and provide services to *pro se* parties by explaining procedures, assisting them in completing forms and providing general information. However, in busy courts, these attorneys have very little time to spend with each party and may become impatient with a distraught litigant. Study participants were concerned that many family law attorneys are unaware of the complex issues involved in domestic violence cases and may give inappropriate advice.

Following on the idea of "lawyer for the day" programs, some study participants suggested that courts set up *pro se* block times, which are periods of time in which cases with pro se litigants are scheduled. An effort could then be made to have trained volunteer lawyers available at those times for consultation or assistance or to perhaps staff those sessions with additional court personnel to deal with issues resulting from lack of legal representation. However, some study participants expressed a concern that "separate but equal" sessions might give the appearance of a two tiered system of justice.

In a few Probate and Family Courts, legal services has obtained funding to locate an office at the court to handle domestic relations cases for indigent parties when domestic violence is an issue. Court staff refer appropriate cases to these offices where the party can obtain advice and representation. These programs appear to be very beneficial to both the parties and the courts. Their location in the court is highlighted as a significant step forward in assisting victims of domestic violence to access the legal system.

A different take on *pro se* issues was noted by a number of study participants who expressed considerable concern about *pro se* defendants abusing the court process by filing repeated motions. In 209A cases, some defendants bring repeated motions to vacate. However, the problem seems to be more prevalent in domestic relations matters where multiple motions for custody, visitation, child support modification, as well as contempts, can be filed. Those attorneys and advocates who raised this issue felt that judges are sometimes reluctant to

step in and often allow a *pro se* defendant to act in a way that they would never allow a represented party to act. Such actions might include harassment by making the other party repeatedly come to court, failure to follow clear orders by claiming she/he did not understand them, repeated failure to comply with requests for discovery (usually without being sanctioned by the judge), and upsetting the other party by making statements and claims that would not be admissible or permitted if made by an attorney. Some expressed the opinion that in many of these cases, the defendant could afford an attorney but has chosen to go *pro se* to be able to use the courts in such a harassing way and to act in a way she/he knows would not be permitted if she/he were represented. Some reported that organizations and coalitions that call themselves "fathers' rights" groups assist these pro se defendants with advice and "model" motions. As a result of the leeway given to *pro se* defendants, custodial parents often are harassed and bankrupted. It should also be noted that some of these practices were complained of even when defendants were represented by attorneys. Study participants referred to "fathers' rights attorneys" who were allowed to harass plaintiffs in the same manner. Court staff indicated that when this is brought to a judge's attention, judges do act on such complaints. However, it is often difficult for a judge who, on any particular motion, may be hearing a matter for the first time to know the whole history of the case. See discussion of individual calendar sessions, *Section III. I.,* below for further discussion on this point.

D. PROBATION OFFICERS (PREVIOUSLY KNOWN AS FAMILY SERVICE OFFICERS)

In Probate and Family Court, parties with disputes about custody, visitation or financial matters are usually required to meet with a probation officer prior to any motion, pre-trial conference, or trial. The probation officer's role is to provide dispute intervention between parties. In many cases, this takes the form of the probation officer working with the parties separately and together to resolve outstanding issues.

M.G.L. c. 209A, sec. 3 provides that no court shall compel the parties to mediate any aspect of their cases. Under this section, a court may refer the case to the probation department for information gathering purposes but cannot compel the parties to meet together in such information gathering sessions. This prohibition is reflected in the *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 6:01 which states that the court shall not recommend or suggest mediation and references the statute. Dispute Intervention in the

Probation Office, a brochure published by the Probate and Family Court Department, repeats this prohibition: "You are not required to meet with the other party in cases where you are seeking an abuse protection order, where there you have an abuse protection order, where there has been domestic violence, or where you feel unsafe meeting with the other party." Probation officers can provide dispute intervention services if the parties have the opportunity to remain separate and apart and the victim is aware that the dispute intervention is not mandatory.

Attorneys, advocates, and litigants commented that, despite the existence of a restraining order, many probation officers attempt to force people into dispute intervention. In some cases, they are pressured to engage in face-to-face dispute intervention. In other cases, they were pressured into participating in non face-to-face dispute intervention in which the probation officer goes back and forth between the parties. There were instances reported in which parties were pressured into face-to-face dispute intervention without their attorneys being allowed in the room.

Attorneys, advocates and litigants also reported that there is tremendous pressure for people to actually reach agreements. Parties feel particularly pressured by probation officers who make statements such as "this is what the judge will order so you will just get him/her angry by bringing the matter to the courtroom." Probation officers, in turn, are feeling strong pressure from judges and assistant registers trying to manage large dockets. As reported by a substantial number of advocates, litigants and attorneys who have represented people who were previously *pro se,* this seems to happen more frequently with *pro se* litigants, as unrepresented parties are unlikely to know what they can request or protest. However, it was also reported as a major problem for parties with attorneys.

This pressure to reach agreements was of particular concern to some study participants as they also noted that not all probation officers appeared familiar with the domestic violence custody and visitation presumption law. (See *Section III. J*. below). Thus their statements to the parties as to what might occur in court may be faulty or misleading.

Many probation officers do seem to understand that dispute intervention is usually not indicated or appropriate in cases where there is domestic violence. Some probation officers have a strict rule of not having people participate in

dispute intervention in such circumstances. Others, however, indicate that their practice is to tell parties that they do not have to participate, but that they can if they so wish. Plaintiffs reported in this study, as well as to attorneys and advocates, that they came away with the impression (even if not intended) that dispute intervention was the preferred method, and if they did not agree, they would look like they were being recalcitrant. This is especially true in cases where a victim of domestic violence has been accustomed for years to "go along" with whatever she/he has been told to do and not to cause upset.

Many study participants pointed to the pressure to enter into agreements as a continuation of the lack of control that victims feel in general in the courts. This comes up repeatedly on the issue of visitation and many leave the court feeling that they have been forced into an agreement for custody, visitation, or support and their abuser has again gotten his/her way.

When parties do reach an agreement on a motion, it is written up and called a stipulation of the parties. In most cases, the parties are told that a judge will sign an order adopting the stipulation as the order of the court later and they should just leave after they sign the stipulation. Advocates and attorneys reported that many victims later say that they were disturbed that their agreement was never reviewed by a judge and that the defendant is never questioned, or even spoken to by a judge. However, as pointed out by court personnel, the practice of having the parties leave after the signing of a stipulation was prompted by another major concern raised by litigants - that of delay. Making people wait until the matter could go in front of a judge could entail sitting in the court house for hours. It was noted that this would also cause delay for other cases as the time a judge spends in the courtroom hearing presentations of stipulations from probation officers and lawyers means that other cases must wait.

Finally, it is clear that many parties never even understand exactly what has occurred. Some of the complaints made by litigants to advocates concerning not seeing a judge after a stipulation has been reached were couched as concerns about not having had a chance to go in front of the judge and make their arguments for what they felt would be the best orders. This seems to evince some confusion about what it means to reach a stipulation. In another instance, one attorney reported that a client, who had previously been *pro se*, thought she had seen and been able to "make her case to the judge" when in fact she had only been before a probation officer. The attorney was not suggesting

that there was any plan to deceive, but she brought it up to illustrate the general lack of awareness that most people have regarding what is happening in court and how important it is for probation officers to make sure the parties really understand what is occurring.

There were a number of recommendations that probation officers need to more diligently obtain a full history of the parties and the relationship at the beginning of the case as this information could impact all of the decisions in the case. Careful listening to both parties will provide important information to the court and others that might become involved in a case (i.e. guardians ad litem, supervised visitation centers). This does happen in some cases but not often enough. This issue has been specifically addressed in trainings provided by both the Judicial Institute and the Probation Department (see *Section V. A*. below), but continues to be a concern.

E. Judicial Demeanor and Conduct of the Hearings

A number of issues were raised regarding judicial demeanor when domestic violence is raised in the context of domestic relations matters. While these concerns varied widely from county to county and court to court, it was notable that advocates, attorneys and plaintiffs raised many more issues about the treatment of domestic violence victims in Probate and Family Court domestic relations matters than in District Court 209A complaints. This concerns included judicial statements and actions which show a lack of sensitivity to the issue of domestic violence, a lack of understanding about how victims of domestic violence and batterers present in court, and a significant dismissal of the fears and concerns that plaintiffs' have for themselves and their families.

> "Probate and Family Court Judges try to 'normalize' domestic violence situations. They want them to be like the 'normal' cases and squeeze them into those boxes. For example, they will say 'if you have kids, you have to work together.' But for a victim trying to establish freedom, that puts them right back to square one."
>
> Legal Services Attorney

F. Individual Calendar Session

Many Probate and Family Courts do not have individual calendars in which a single judge is assigned to a case. As a result, parties may have a different judge every time they appear in court on motions, contempts, and evidentiary hearings.

Advocates and attorneys expressed the concern that family history and dynamics are very important in domestic violence cases and having the same judge increases the possibility that the judge will remember aspects of the case. Although it would be impossible for judges to remember every aspect of each case, attorneys report that in individual calendar courts judges often remember the major and important facts about a family. This can mean that the victim does not always have to repeat the entire history of the battering in their relationship every time she/he goes to court, a tiring and emotionally difficult task. Individual calendars also better enable judges to realize when defendants are using the court system to harass the victims through tactics such as repetitive motions and contempts, thus allowing them to act quicker to stop the practice.

A number of the divisions of the Probate and Family Court have moved to individual calendar sessions. However, less this be seen a great panacea, one study participant noted that an individual calendar session court is only as good as its weakest judge. The party who is assigned that judge for all of his or her case may not feel so sanguine about individual calendar sessions.

G. Amending District Court Orders

Many parties come into a Probate and Family Court with an existing District Court restraining order. This can result in conflicting orders (e.g. a District Court restraining order which mandates that the defendant stay 100 yards away from the marital home, but a divorce order giving him or her the right to pick up the children for visitation). This issue was addressed by a Trial Court Administrative Order authorizing the Probate and Family Court judge to sit temporarily as a District Court judge for the limited purpose of amending the District Court order so that it does not conflict with the Probate and Family Court order. See Trial Court Administrative Order 96-1, *Procedure for Interdepartmental Determinations in Abuse Prevention Proceedings* and *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 13:00.

Initially, this approach seemed preferable to having Probate and Family Court judges vacate District Court orders so that it would not appear that one court was taking jurisdiction away from another court or that one judge was

superseding another. As at least one Probate and Family Court Judge stated, he felt that it was inappropriate for him to just vacate another judge's order.

While Probate and Family Court judges generally felt the process of Probate and Family Court judges amending District Court orders was working fairly well, District Court judges, attorneys, advocates, and assistant district attorneys indicated that it has not worked as smoothly as hoped. Specific problems have included:

- The District Court not being notified of the modification so that it can change the docket and court records to reflect the modified order.

- Probate and Family Court judges forgetting that they have on a District Court hat and modifying the District Court order to include visitation, instead of just modifying the District Court order so that it is not inconsistent or in conflict with a Probate and Family Court visitation order.

- Vague modifications such as "no contact except to allow visitation" with no information given as to what the visitation is or any reference made to the Probate and Family Court order.

- Modifications that are too detailed (no contact except for from 3-5 on alternate Tuesdays but only if the person does not leave their car and honks) leaving District Court judges and prosecutors to try to enforce an order that they did not enter and which they may not actually understand.

- Modifications that are hand written and simply unreadable.

- Faxing the orders back and forth which can result in delays and additional staff work when facsimile machines are not working, the faxed orders being illegible, and difficulty determining in a file filled with faxes which is the current order.

Because of these problems, many District Court judges stated that the amendment process is not working and that the Probate and Family Court should just vacate their orders and enter new ones. This proposal, however, is

not as simple as it appears. Probate and Family Court judges are concerned that simply vacating the District Court order and starting anew is not always a good solution as the plaintiff then has to actually file a new complaint and affidavit so that there is a properly docketed Probate and Family Court matter. There is disagreement as to whether the Probate and Family Court can accept the affidavit from the District Court. Some advocates were also concerned that a plaintiff who might have had a restraining order in place for months or maybe years and was now in Probate and Family Court might be reluctant to have the District Court order vacated without the assurance of an order of the same scope being issued by the Probate and Family Court. This would be especially true if there had been no incident of violence since the issuance of the District Court order. Based on the experience of advocates and attorneys with having orders extended after a year in such circumstances (see *Section II. J.* above), they are leery of agreeing to a system in which District Court orders are vacated.

Many advocated a simpler process that would allow cases docketed in one court to be transferred to another court. Several suggested a form of universal restraining orders that could be docketed in any court and then transferred from one court to another much like a restraining order from one state can be registered in another state. Any order issued by a court would automatically become the order of any new court in which the matter is then newly docketed. Developing this approach will take considerable thought and time as potential issues raised by such a process are explored. Such a system may be easier to construct under the proposed MassCourts Project computer system (see *Section II. F* above) which would facilitate the ability of courts to "talk" to each other electronically. Advocates and attorneys urged that until there is a such change, the courts needed to work out the logistics of the current system so that it can operate as smoothly as possible. It was suggested by senior court personnel that members of the bar who practice in both courts, particularly working through bar associations, could play a positive liaison role between the courts on these issues.

BEST PRACTICE - Every two months, the restraining order staff from Worcester Probate and Family and from the Worcester District Court, the SAFEPLAN advocates from both courts and the Worcester police domestic violence liaison meet to work out procedural and substantive issues between the staff of the different courts, the advocates, and the police.

H. GUARDIANS AD LITEM

With the possible exception of interpreter services, the issue that raised the most concerns, complaints, and overall frustration was the performance of guardians ad litem. Across the state attorneys for plaintiffs, attorneys for defendants, advocates, and guardians ad litem themselves raised similar concerns. The specific complaints included:

- **Lack of Experience.** Too many guardians ad litem do not have experience in identifying or assessing domestic violence or in handling matters that involve domestic violence.

- **Use of Rotating List.** Pursuant to Supreme Judicial Court Rule 1:07, the Probate and Family Court maintains a list of persons who can be appointed as guardian ad litem evaluator or a guardian ad litem investigator. Appointments from the list must be made successively unless the judge making the appointment provides a brief written statement for not following the order of the list. The use of rotating lists of guardians ad litem was promulgated with the idea of opening appointments up to many and not allowing courts to play "favorites". However, the use of such rotating lists makes it more likely that, unless a party is represented by a knowledgeable attorney who knows that the court may choose not to follow the order of the list and/or knows to request a G.A.L. with the necessary experience, cases where domestic violence is a factor may be assigned a guardian ad litem with no domestic violence experience. There is, of course, a particular risk for this to occur when the parties are *pro se.*

- **Continuing Education.** In order to remain on the list, each guardian ad litem is required to take 6 hours of continuing education each year. The Probate and Family Court has never received funding from the Legislature to provide any training for guardians ad litem and has had to rely on outside providers. Many study participants indicated that the current guardian ad litem trainings address domestic violence in a very limited fashion. There is also disagreement between the different private providers of such training as to the appropriate content of a domestic violence training. Many study participants argued that there needs to be

extensive, monitored, and mandatory domestic violence training for all guardians ad litem. They also feel that at least the initial training to be certified as a guardian ad litem needs to be longer than the current six hours and include more training on domestic violence issues. The Committee for Public Counsel Service (CPCS) training for attorneys handling family law cases was posed as a model where in to be placed on the CPCS list, the attorney must attend a multi-day training and, to remain certified, attend eight hours of continuing education in subsequent years.

- **Knowledge of Legal Issues**. Guardians ad litem who are not attorneys need additional training on legal issues so their reports can be used by the court to craft feasible and coherent orders. Recommendations beyond a court's jurisdiction or not feasible under current court constraints are not helpful to a judge and may create inappropriate expectations in parties. Reports that contain sections which do not meet evidentiary standards for admission are a waste of time and resources.

- **Judicial Instructions.** Judicial instructions to guardians ad litem are often either unclear or non-existent. Guardians ad litem are not given clear guidance as to the extent to which they should be conducting a factual investigation, doing a clinical evaluation, making a factual report, making recommendations, etc. Nor is the language used by judges uniform, leading to confusion as to the expectations of the court.

- **Weight Given G.A.L. Reports by Probation Officers.** Probation officers are giving too much weight to guardian ad litem reports leading the probation officers to pressure parties to agree to the guardian ad litem's recommendations.

- **Judicial Deference**. In too many cases, the courts are delegating their decision making function to guardians ad litem by adopting their recommendations wholesale.

- **Complaint Process**. The procedure for submitting a complaint concerning a guardian ad litem is not clear.

Appropriate Professionals for G.A.L. Appointments. There are numerous lists for the appointment of guardians ad litem in Probate and Family Court domestic relations cases. The two lists generally mentioned in terms of domestic violence cases are Category E and F. Category E guardian ad litem evaluators must be licensed clinicians and/or mental health professionals. Persons qualified to be Category F guardian ad litem investigators, may be either the above listed mental health professionals or attorneys. A number of people raised the issue of when a judge should appoint an attorney as guardian ad litem and when it is appropriate to appoint a mental health clinician as guardian ad litem. Some expressed a preference for an attorney guardian ad litem when a factual investigation is necessary. Clinicians, while skilled at making clinical assessments from interviews with parties and their children, are less likely than an attorney to conduct the fact-finding investigation (interview neighbors, old girlfriends, put together time lines, etc.) necessary to assist the guardian ad litem and the court to determine credibility of the parties and determine what actually occurred in the family. However, a mental health clinician as guardian ad litem can provide the court guidance in assessing the parties' relationships with each other, their parenting skills, how visitation would affect a child, etc. One person phrased it differentiating between when a judge needs to decide whether or not the case involves domestic violence (and of what level) and when a judge needs to craft appropriate orders in a case involving domestic violence. It was noted that it is not always easy to segment cases in such a fashion nor is it logistically or financially practical in most cases to have two guardians ad litem. However, more in-depth history gathering and case assessment before the appointment of a guardian ad litem might give a court greater guidance as to who should be appointed. Along this line, one mental health clinician guardian ad litem felt that it was helpful to have an attorney work with a clinician guardian ad litem when crafting reports. Most clinicians are simply not used to phrasing their reports in a way which makes sense in the legal system and do not always organize or present the information in ways that would best assist the judge in making specific decisions about visitation and custody.

Current Court Activity. The Administrative Office of the Probate and Family Court (AOPFC) is working to develop standards for guardian ad litem investigations, evaluations, and reports. The AOPFC has received a grant to retain a group of professionals which has begun drafting such standards. The AOPFC has also reviewed proposed standards and guidelines developed by a

subcommittee of the Governor's Commission on Domestic Violence.
A number of current guardians ad litem suggested that there should be a mentoring system to train and evaluate the quality of guardians ad litem. This could take the form of a guardian ad litem doing his or her first three cases under some form of supervision. The AOPFC has been exploring mentoring or supervision models but has been informed that liability insurance issues may be a major barrier to such a system. It is also unclear whether the court will be given sufficient resources to pay for any mentoring or supervision models.

In addition, the AOPFC is requiring all Category E and Category F guardians ad litem to attend a mandatory six hour training on domestic violence issues. This training is being offered by the AOPFC in collaboration with the Administrative Office of the Trial Court (which obtained the necessary funding though the Massachusetts Executive Office of Public Safety which disburses under the federal money received under the Violence Against Women Act), and the Boston Medical Center Child Witness to Violence Project. Utilizing a faculty that includes clinicians and attorneys, the topics that will be addressed will include the role of a guardian ad litem in a domestic violence case, the impact of domestic violence on children and on parenting, investigating the evidentiary issues in domestic violence cases, interviewing children and parents, and how to obtain relevant documents.

I. COURT CLINICS

In several counties, the Probate and Family Court has had court clinics in which mental health professionals perform initial evaluations and assessments, especially in custody and child welfare cases. The traditional court clinic model has mental health professionals on staff. Under a newer model, outside providers contract with the court to provide these services.

Court clinics have gotten mixed reviews from advocates and practitioners. Some attorneys and advocates were very positive about the assistance that these clinics give the court, particularly in cases where there are no funds for a guardian ad litem. Others, however, pointed to the same problems that come up in cases with guardians ad litem; in particular, the lack of training about or understanding of domestic violence issues and the over-reliance by probation officers and judges on clinic reports.

Due to time constraints, this topic was not delved into deeply and needs more assessment and research. The current status of such clinics has also been affected by the financial situation in the state. Staff operating in the traditional models have been laid off, and contracts with outside providers have been put in jeopardy or the area covered by the provider has been expanded without sufficient funds to cover the expansion.

J. CUSTODY

General Concerns. Attorneys and advocates raised serious concerns about the courts' approach to domestic violence when making custody orders. Some attorneys indicated that the judges in some counties are very good about making sure that batterers did not gain custody. However, many study participants felt that many judges, probation officers, and guardians ad litem:

- Do not understand the effect of domestic violence on children. This lack of understanding is most pronounced in cases where the children themselves have not been physically harmed and may not even have witnessed the domestic violence. As a result, they may fail to recognize the suffering of children due to seeing the parent's bruises, feeling the strain that the entire family is under, or from disruption in their care due to the physical, emotional, and psychological toll domestic violence takes on a victim.

- Do not understand concerns about the ability of batterers to parent and the dangers associated with children living and/or having unsupervised visitation with parents who batter. Many noted that the issues of control and intimidation that are the hallmark of domestic violence may well affect parenting. In addition, a number of people pointed to studies documenting the overlap between domestic violence and incest perpetration.

- Lack the ability to assess the dangerousness that the batterer poses to the custodial parent through contact mandated by visitation or shared physical or legal custody.

- Are not aware of the effect of granting joint legal custody, which allows an abusive parent to deny his/her children such services as therapy or

counseling.

- Do not understand the concerns of battered mothers around the emotional and physical safety of their children, tending to mark those concerns up to hysteria, desire to control, or parental alienation.

- Do not understand that the fact that a batterer has not directly harmed the child (or has no criminal record) does not mean that person is a safe and appropriate parent.

- Do not understand how a batterer uses children to continue his/her control over the victim and how, when the children remain the only tool for such control, previously acceptable parenting can be compromised.

Judges and court staff acknowledged the concerns expressed but noted that not only are custody (and visitation) issues among the most challenging faced by the court, they are also an area in which litigants often did not recognize the role of the court or the evidentiary standards that must be met. In many cases, it is not that the judge fails to take domestic violence into account when fashioning a custody or visitation order, but that the judge finds that the allegations are not credible or have not been supported by sufficient evidence. Simply because allegations are made concerning domestic violence, it does not follow that the judge would find those allegations to be true. It was noted that this is also an area in which litigants often did not understand what was feasible under the rules of evidence. For example, it was noted that litigants would often say that they can bring in letters to support their allegations, but they did not or could not follow through when told that the person would need to testify.

Impact of the Domestic Violence Custody Presumption. As noted in *Section II. L.* above, in 1998 M.G.L. c. 208, sec. 31A was amended to provide for certain presumptions concerning custody in cases involving domestic violence. The statute now requires that where the court finds, by a preponderance of evidence, that a pattern or serious incident of abuse toward a parent or child has occurred, a rebuttable presumption is created that it is not in the best interest of the child to be placed in sole custody, shared legal custody, or shared physical custody of the abusive parent. This presumption can only be rebutted if the court finds by a preponderance of the evidence that the award of any form of custody to the batterer is in the best interests of the child. If there is a finding

that a pattern or serious incident of abuse toward a parent or child has occurred, and the court issues a temporary or permanent order custody, regardless to which parent, the court shall within 90 days enter written findings of fact. These findings of fact must address the effect of the abuse on the child and must demonstrate that the custody order is in the child's best interest and provides for the safety and well-being of the child. These findings must be made even if the court is granting sole custody to the non-abusive parent. If ordering visitation for the child, the court is required to provide for the safety and well-being of the child and the safety of the abused parent. The court may consider a number of different visitation requirements such as exchanges in a protected setting, supervision, attendance at a batterers' intervention program as a condition of visitation, restriction of overnight visits, and the posting of bonds.

Most attorneys for plaintiffs and advocates agreed the domestic violence presumption is rarely used or considered even in cases in which the parties are represented by counsel, but differ on the reasons why:

- **Lack of Evidence.** Judges and attorneys noted that counsel often do not raise the presumption or provide the necessary evidence for a judge to determine that the presumption should be triggered.

- **Need for Findings in all Cases.** Some attorneys indicated that when they feel there will be a ruling favorable to their client, they would rather not raise the issue, as it then requires the judge to make findings even though she/he is not giving any form of custody to the batterer. It was noted, however, that the Probate and Family Court has promulgated easy to use forms for such findings. Thus issuing findings does not need to be a significant burden on a judge.

- **Knowledge of Bar.** It was also noted that the private bar is less likely than legal services attorneys to raise the presumption leading to some concern as to the knowledge of the private bar about the statute.

- ***Pro Se* Litigants.** As noted, this is an area in which *pro se* litigants are at a particular disadvantage. See *Section II. H* above. It was also noted by some study participants that a number of probation officers were not familiar with the presumption, and, thus were unable to assist *pro se* litigants or the courts in determining the applicability of the statute.

- **Need for Evidentiary Hearing.** Additionally attorneys reported that there were different interpretations of the statute by different judges. One area of disagreement is whether or not the presumption can be triggered and findings made by a court at the temporary order stage when there has not been a full evidentiary hearing. There may well be evidence of past or present abuse in an affidavit filed in support of a motion for a temporary order or the court may be presented with an affidavit from a 209A complaint which details a pattern or serious incident of abuse. Some judges will accept this as evidence which must be considered to determine if the presumption is triggered. Others indicate there needs to be a full evidentiary hearing, which in many cases will not happen until the time of trial. As most cases, even those with allegations of domestic violence, settle before trial, there may never be an opportunity for the statute to be considered. It was reported that where the attorney specifically requests an evidentiary hearing she/he might have to wait three months for such a hearing, during which time the court has ordered some form of joint custody.

- **Need for Specific Request.** Some attorneys and advocates indicated that some judges feel that a specific request must be made before they need to consider the presumption. These attorneys noted that the language of the statute is mandatory and does not require a party to specifically request a hearing or findings on the issue. If there is evidence of past or present abuse, it must be considered by the judge to determine if the presumption is triggered. They noted that requiring a request would put too high a burden on *pro se* litigants.

- **Failure to Consider Presumption.** Finally, some attorneys stated that certain judges will not consider the presumption statute, even in cases in which a party is represented by counsel and specifically basing their custody and visitation requests on the domestic violence. Other study participants noted that simply because domestic violence allegations are made, it does not follow that the judge would find those allegations to be credible. The failure to find the presumption triggered does not automatically mean that the judge did not consider the statute.

It should be noted that a number of attorneys indicated that the concerns they

have on the use of the presumption statute lay less in the area of custody and more in the judge's use of the statute to craft visitation orders, an area in which the statute gives greater discretion to the court. (See *Section III. K.* below).

The Probate and Family Court and the Judicial Institute have provided training to judges and probation officers that specifically addresses the presumption statute. As noted above, the Chief Justice of the Probate and Family Court promulgated forms that can be used by the judges when findings are necessary. One form addresses findings relating to issuing a custody order to a non-abusive parent and the other when the court needs to make findings to issue some form of custody order to a parent who has been found to be abusive. It was noted by some advocates that this promulgation showed a real commitment on the part of the Chief Justice's office to address these issues and to make the implementation of the presumption statute as effective and efficient as possible.

Some attorneys believe that the domestic violence custody presumption statute has lead to an increase in the number of 209A complaints and that many are filed only just before or after a divorce is filed. They argue that such complaints should be regarded as suspect and only filed to try to trigger the presumption. Interestingly, however, one attorney who made this claim at the same time reported that many victims find it very difficult to disclose abuse and will often take a long time to tell anyone about it, even their divorce attorney.

In fact, the number of 209A orders issued by the District Court and Probate and Family Court has actually decreased each year from 1993 to 2000 for an approximate 30% decline.[2] The Office of the Commissioner, which gathers the information from the Registry of Civil Restraining Orders, indicated that this decline has continued since 2000. [3]

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[2] In 1997, the year before the passage of the custody and visitation presumptions, a total of 39,695 orders were issued by the District Court and Probate and Family Court. In 1998, the number was 37,925; in 1999, the number was 36, 056; and in 2000, the number was 34,715. Registry of Restraining Orders Summary, Calendar Year 1993- 2000, Research Department, Field Services Division, Office of the Commission of Probation.

[3] The number of orders issued for July 1, 2001 to June 30, 2002 was 34,375.

K. VISITATION

As with custody, there were great concerns raised about the courts' consideration of and understanding of domestic violence when making visitation orders. As discussed above, it was noted that the majority of complainants did want their children to have some form of visitation. Some judges estimated it at 80%. This, however, leaves many plaintiffs who are concerned about visitation. Further, attorneys noted that their clients might not be opposed to visitation but were very concerned about the appropriate form of visitation. The same issues came up again and again, including understanding the effect of domestic violence on children, the ability of batterers to parent, the dangerousness visitation might present to the other parent and the children, and the lack of understanding of the concerns of battered mothers.

> "I had just gotten a restraining order from the court because I was so afraid of my husband, yet they expected that I would drop a three year old off with him for the week-end. I could not understand that but the Judge did not seem to even understand my concern."
>
> Plaintiff

As noted in *Section III. J.* above, many study participants were concerned that judges do not understand how batterers are able to use children to continue to control the victim. With visitation, a batterer can use the children to find out information about the victim and can undermine the parenting and authority of the custodial parent by denigrating the custodial parent or countermanding the custodial parent's, rules, or requirements. It was also expressed on a number of occasions that judges seemed more concerned with the rights of the non-custodial parent to have contact with the children than with the concerns of the victim or the effect on the children.

Finally, there was great concern about the lack of understanding that batterers use visitation to stay in contact with their victim, and that visitation transfers are used as opportunities to inflict verbal, emotional, and physical abuse on the other parent and the children. In these instances, the emotional and verbal abuse can be insidious. If struck, a parent is more likely to be able to come into court and obtain some relief. However, parents cannot come to court seeking relief every time there is a taunt, an inappropriate statement or action designed to evoke past abuse.

Temporary Orders. Temporary orders are those that are issued during the pendency of a divorce before the trial and final judgment. Evidentiary hearings are usually not held on motions for temporary orders and the question of whether or not there are facts which would trigger the presumption of custody and visitation when there is domestic violence almost never arises. As noted in *Section II. L.* above, in a case where there has been a finding by the court by a preponderance of evidence that a pattern or serious incident of abuse toward a parent or child has occurred, if ordering visitation for the child, the court is required to provide for the safety and well-being of the child and the safety of the abused parent. The court may consider a number of different visitation requirements such as exchanges in a protected setting, supervision, attendance at a batterers' treatment program as a condition of visitation, restriction of overnight visits and the posting of bonds. It was reported that although requested, these safeguards are rarely ordered. In particular. Probate and Family judges usually do not require attendance at a batterers' intervention program as a requirement for visitation. (See discussion at *Section II. L* above.) Some courts are better than others in requiring supervision, but there are cases in which the supervision is only for a short period of time despite the possibility of long-term risk. See *Section III. K. 3.* below for further discussion on supervision.

Final Orders. Study participants indicated that judges are reluctant, even at a hearing on permanent orders, to address whether the presumption of custody and visitation when there is domestic violence has been triggered, to make required findings, or to put in place visitation requirements. The initial temporary visitation order usually becomes the permanent one.

Supervision. Over the past decade and a half, supervised visitation centers have provided the courts with an important tool in cases involving domestic violence. These centers offer a wide range of services. Supervised visitation centers can provide a neutral setting for a visit and a supervisor who monitors the visit, but only intervenes when an issue of safety arises or when a parent violates any rules that have been set concerning activities or conversation (e.g. leaving the sight of the supervisor, whispering to the child, speaking about the divorce action, asking questions concerning the other parent). In some cases, supervised visitation can involve working with a parent during visitation on issues of parenting. In other cases, it can actually function as a form of family therapy. A center can also provide a safe place for the drop-off and pick-up of children at the beginning and end of an otherwise unsupervised visit.

However, there remain significant concerns about the understanding of probation officers, guardians ad litem, and judges concerning the need for supervised visitation and the best use of such visitation. As a new and growing field, standards of practice and a shared terminology are still in the development stage, which can create challenges for courts in crafting appropriate orders.

More and more courts are ordering supervised visitation, but there are many concerns with the orders. For example, orders may be issued without anyone from the court first checking on the availability of supervision. Study participants indicated that judges often lack information concerning a particular center's intake and supervision process and, thus, order visitation to begin before these procedures can be followed. Moreover, judges often expect reports and evaluations that the supervised visitation providers are unable to provide. When reports are requested by the court, there is often a lack of clarity as to whether a judge is looking for a factual report about what has occurred at visits or an evaluation of the effect of visits on a child. There is, as well, lack of agreement on the part of the centers as to what form of reports are appropriate for staff to provide to the court.

A particular issue that has come up is judges ordering "therapeutic" visitation. There are different opinions among both the courts and supervised visitation centers as to what this label means or what "therapeutic" visitation entails. The staff at some centers feel that all their supervised visitation has a therapeutic component while others feel that this term entails working with the parent on issues of parenting. For some, this term connotes working on the parent-child relationship in a form of family therapy which may require the involvement of the custodial parent. Thus, the term may appear in an order, but have a different meaning to the court than to the visitation center. This can result in the desired service not being provided or confusion as to whether or not the visitation center provides the service requested.

Another issue raised by some study participants is the tendency of some courts to order only a limited number of supervised visits. For instance, a judge may order four supervised visits and if no problems arise, supervision ends. Not only is it unclear what is meant by "any problems", but in a case where there are serious questions about parenting and safety, most indicated that four visits are not sufficient to resolve or trigger concerns. As some study participants noted,

a parent can remain on "good behavior" for a certain number of visits, but over the long run may not be able to maintain such conduct. Others noted that if there has not been contact for a period of time, there can be a "honeymoon" period over the first few visits, which can then disintegrate. Finally, some parents may be able to maintain their positive behavior only while being supervised, but not when visits become unsupervised.

The use of family members or friends to provide supervision is an important concern to many advocates and attorneys. A family that has not accepted that a relative is abusive is unlikely to provide appropriate supervision. They may not maintain vigilance against the parent saying inappropriate things to the child or in guarding against their own potentially inappropriate and damaging statements. Moreover, they simply may not be qualified to provide appropriate supervision. A legal services attorney told of a case in which a batterer proposed his boss as a supervisor. The judge stated that since this man supervised people at work he was qualified to be a visitation supervisor. However, as both court staff, attorneys and judges noted, there often are simply no resources available to pay for supervised visitation. Additionally, supervision center slots are not always available.

A formally convened Coalition of Supervised Visitation Centers meets regularly. The members indicated that a task force developed specific guidelines about the use of supervised visitation, but that these guidelines are not being implemented. The court has noted that implementation of the guidelines is a resource issue as they place a heavy burden on probation officers in the areas of screening cases and potential supervisors. However, the guidelines have been provided to the Family and Probate Court Judges to assist them in making their determinations.

Batterers, Intervention Programs. Although Probate and Family Court Judges can require attendance at batterers' intervention programs as a condition of visitation, they rarely do. Batterers' intervention staff consistently indicated that almost no referrals come from the Probate and Family Court. The judges do have information concerning these programs. The Administrative Office of the Probate and Family Court has provided all Probate and Family Court Judges with information from the Department of Public Heath concerning certified batterers' intervention programs. Judicial Institute training programs have also specifically addressed the purpose and structure of these programs.

Some judges has indicated that they have concerns about the costs or availability of these programs for certain litigants. Please see *Section IV. E.* below for an in-depth discussion of these concerns.

L. PARENTING COORDINATORS

There is a relatively new practice in the Probate and Family Court in which judges appoint parenting coordinators to play some role in supervising custody and visitation in a family even after the entry of a judgment. In some cases their role is similar to that of an arbitrator in binding arbitration. Thus, if the parties bring a dispute to the coordinator, what the coordinator says goes. In others, they take the role of a mediator, bringing parties together to reach agreement. In still others, they act only as an advisor and observer. Some judges will only appoint a parenting coordinator when there has been a agreement by the parties. Although 41 out of 50 Probate and Family Court Judges polled by Massachusetts Continuing Legal Education (MCLE) indicated that parenting coordinators had been used in at least one of their cases, there is no common protocol in use to determine when it is appropriate to appoint a coordinator or how to appoint or instruct them.

This is an area that needs to be closely watched. Attorneys, advocates, and guardians ad litem raise the same concerns about parenting coordinators that are raised about guardians ad litem, such as a lack of knowledge or training concerning domestic violence. There is also a concern about whether the court can, especially post-judgment, constitutionally delegate what are essentially decision making parental roles to a third party. Others, however, feel that the coordinator can provide a real advantage for battered parents, bringing needed oversight to their cases and obviating the need to repeatedly go to court for modifications and contempts.

Legislation has been proposed which addresses the issue of parenting coordinators. The legislation had already undergone a number of changes, including moving from mandating coordinators in "high conflict cases" to voluntary language. A number of study participants indicated that they are following the legislation closely based on its potential major impact in domestic violence cases.

M. FINANCIAL ISSUES

1. Child support/Spousal Support

Concerns were raised that courts tend to minimize the effects of domestic violence in a family when making child or spousal support determinations. This might involve ignoring the inability of the custodial parent to work due to post traumatic stress syndrome or overlooking the use of financial control of a batterer who has diminished the family assets. Batterers sometimes propose that they pay a lower amount of child support and instead make payments for specific activities, such as music lessons or camp. If allowed, this can result in the batterer's continued control as the custodial parent will have to contact and, maybe, pursue the other parent for these fees. Additionally, support orders may not take into account the need for therapy for both the abused parent and children.

Many attorneys raised the concern that judges are not aware of how batterers use non-payment of child support or spousal support as a way to continue to control and manipulate. Often the batterer will repeatedly fail to pay the ordered support. The plaintiff files a complaint for contempt. The batterer then pays either on the day of court or by the day set by the judge at an initial hearing. The judge then either finds the defendant not in contempt or purges the contempt. Thus, although the custodial parent eventually obtains the money which is due, the batterer has been successful in putting him/her through the time, cost, and emotional trauma of a court proceeding.

2. Attorneys' Fees

Probate Court Supplemental Rule 406 allows judges to award attorneys' fees, costs and expenses at the beginning or during the pendency of a domestic relations matter. This is referred to as awarding fees *pendante lite.* For victims of domestic violence who often have had no access to family assets, who may not be employed, and who may have even fled their home, such an award is crucial to their ability to retain an attorney. The Probate and Family Court is aware of the importance of this issue and amended the Supplemental Rule to facilitate such awards. However, while in some counties attorneys' fees are regularly considered and often granted, study participants indicated that in most counties, very few judges are willing to award attorneys' fees *pendante lite.* This is a matter that the Administrative Office of the Probate and Family Court

is committed to continue to review through training and discussion at conferences.

Attorneys also noted that judges repeatedly refuse to order attorneys' fees or sanctions on contempts. This is particularly true in cases where the failure to pay does not happen constantly but a payment or two is delayed every few months or so or in the cases when payment is made at the time of a court hearing. These actions harass plaintiff, but are often not enough to draw fines or fees.

N. Issues for Linguistic Minorities

In addition to the issues for linguistic minorities raised above (*Sections I. H. and II . P.*), other issues arise in domestic relations matters. It can be difficult to obtain supervised visitation when the non-custodial parent does not speak English. It is also difficult to obtain guardians ad litem who can speak the parties' language. Some judges feel strongly that the guardian ad litem should be proficient in the language of the parties and will appoint someone who speaks the plaintiff's language, even if that person is not on the list or qualified in any way.

IV. Violations of Restraining Orders/Other Criminal Matters

A. Concurrent 209A Hearing/Arraignment

It is not uncommon for a defendant to be arrested for a criminal offense (e.g. assault and battery) at the time a 209A complaint is filed. In some courts, because the criminal arraignments are done first, the defendant may leave before the 209A hearing. It is then necessary to serve the defendant with the 209A order and make the parties come back for a hearing after notice. However, it was generally reported that court staff make an effort to get the 209A paperwork in to the courtroom so the matters can be heard at the same time.

While many supported the practice of hearing the request for a 209A order at the time of the arraignment, some advocates complained that when this occurred, the attorney appointed for the defendant in the criminal matter often goes beyond the scope of his/her appointment and represents the defendant in

the 209A hearing, often being allowed to cross-examine the plaintiff. The advocates felt that this was not appropriate. However, criminal defense attorneys indicated this is often the only way they can fully ascertain the allegations concerning their client as they are often not fully stated in the affidavits, and the plaintiffs are often unreachable after the hearing. These allegations are critical information in the criminal case.

B. BAIL

A number of advocates, assistant district attorneys, and attorneys who represent plaintiffs indicated that there are very few "dangerousness hearings" in cases involving domestic violence. Normally when bail is set in a criminal matter, the only consideration before the court is whether or not the person is a "flight risk". However M.G.L. c. 276, sec. 58A allows the Commonwealth to move in certain cases, based on dangerousness, for an order of pretrial detention (which would prevent a release on bail) or an order of release based on conditions designed to protect the safety of any person and the community. Such cases include violations of 209A and domestic relations restraining orders and felonies which involve threats or risk of physical abuse or force against another. Such orders can only be issued following a hearing in which the potential dangerousness of the defendant has been established.

There were a number of explanations given for the lack of such hearings. A number of civil advocates indicated that assistant district attorneys were not requesting these hearings. Other civil and district attorney victim-witness advocates indicated that judges were not holding the hearings, but it was not always clear if the advocate knew whether or not a formal motion had been made. The statute indicates that if such a motion for a "dangerousness hearing" is made, the court shall hold the hearing. Some district attorney victim-witness advocates noted that many of the assistant district attorneys with whom they worked had given up requesting such hearings as the judges either would not hold the hearing, hold a perfunctory hearing, or never find the conditions necessary to deny bail. The assistant district attorneys who regularly appear before these judges eventually feel it is not worth antagonizing the judge by requests that were never meaningfully acted upon. It should also be noted that a few experienced assistant district attorneys commented that judicial practice concerning dangerousness hearings is not different in cases involving domestic violence compared to other types of crimes. Some study participants noted that, for a number of reasons, an assistant district attorney might not wish the victim

or other witness to be cross-examined prior to trial. Some pointed to the fact that dangerousness hearings might be very difficult for victims. In most cases they will be forced to come to court and testify, perhaps at their most distraught as the complained of incident may have occurred just the night before. They also will be subjected to cross-examination by the defense attorney, which can be difficult. However, it was noted, in many cases the victim is already at court and has already testified at a 209A hearing and, thus, would probably have no compunctions about testifying again. Further, in many cases a victim's fear for his/her safety and desire to have the defendant held without bail might outweigh his or her wish not to testify or be cross-examined. Finally, it was noted by some criminal defense attorneys that they believed that there were cases in which a dangerousness hearing was not requested by the assistant district attorney because she/he wished to delay the provision of discovery or information that the defense attorney might obtain during the course of such a hearing.

Questions were also raised concerning the requirement of notice when a defendant is released on personal recognizance or is able to make bail. Some advocates indicated that some judges are confused about their responsibility to notify the victim in such a case and about how to actually give notice and if they are personally responsible for making it. This issue is specifically addressed in the *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 8:08. M.G.L. c. 209A, sec. 6 which indicates that when a judge or any other authorized person bails a person arrested under the provisions of 209A, he shall make reasonable efforts to inform the victim of the release. Section 6 further provides that if a person arrested for a crime involving abuse is released from custody the court or the emergency response judge shall use all reasonable efforts to notify the victim immediately of the release from custody. The *Guidelines* indicate that these sections together suggest that as a matter of policy, when a defendant charged with either a violation of a 209A order or a crime involving abuse is released from custody at court (whether on bail or on personal recognizance), the judge should see that reasonable efforts are made to notify the victim. The judge can instruct a probation officer or a staff member of the clerk's office to attempt to contact the victim or can request the police, the prosecutor or the victim-witness advocate to make such contact.

C. WARRANTS/SHOW CAUSE HEARINGS

Whenever the police have probable cause to believe that there has been a violation of a 209A vacate, restraining, suspension and surrender, or no-contact order or similar protective orders issued under the divorce, separate support or paternity statutes (M.G.L. c. 208, 209, 209C), an immediate warrantless arrest is required. M.G.L. c. 209A, sec, 6(7). However, some police officers instead refer victims to court to file an application requesting that a criminal complaint issue and to seek a summons or an arrest warrant. This may occur because the police do not feel they have probable cause to arrest, because they do not know the location of the defendant and wish to have a warrant issued that can go out to all police, or because they, for whatever reason, simply decline to exercise their ability to arrest. However, it was noted that, instead of hearing the application for a complaint immediately, in certain cases some District Court Clerk-Magistrates and Assistant Clerk-Magistrates set the matter down for a show cause hearing with notice to the defendant. The *Guidelines for Judicial Practice: Abuse Prevention Proceedings* 8:01 makes it clear, however, that the hearing can and should proceed immediately without notice to the defendant, as one or more of the statutory grounds for eliminating notice (imminent threat of bodily injury, commission of a crime or flight from Massachusetts, M.G.L. c. 218, sec. 35A) would exist in most such cases. This section of the *Guidelines* also makes it clear that the Clerk-Magistrate or Assistant-Clerk Magistrate has the discretion to issue a warrant rather than a summons, and that this is the preferred approach.

It should be noted that this topic is specifically addressed in the domestic violence education programs provided for Clerk-Magistrates and Assistant Clerk-Magistrates. However, not all people holding such positions attend these trainings.

D. PROSECUTION

Some civil advocates reported that some assistant district attorneys are not prosecuting cases to the fullest extent, not asking for dangerousness hearings or high bail (see *Section IV. B.* above) or requesting sentences which require attendance at a certified batterers' intervention program. This is clearly not true in all counties or courts, but these issues were raised a number of times. Many in the District Attorneys' offices say that if a judge refuses to hold

dangerousness hearings, set high bail, or require batterers' intervention programs, at some point you only infuriate and alienate the judge by continuing to request things you know she/he will refuse. In particular, it was pointed out that some judges become very angry at assistant district attorneys who push for batterers' intervention when they know the judge is not disposed toward this option.

A frequently raised concern was what to do in cases when the victim does not want to go forward, but there was little consensus on the best approach to take. Some civil advocates and attorneys feel that plaintiffs were intimidated by the assistant district attorneys and their rights were overridden as they were pressured or forced into going ahead with prosecutions against their will. Others feel that because victims are so often intimidated by their batterers, assistant district attorneys should go ahead with more cases even when the victim will not cooperate or has indicated that she/he will refuse to testify against a spouse; a privilege that all spouses have in Massachusetts.

Both civil advocates and defense attorneys stated that some victims relate being threatened by assistant district attorneys with prosecution for perjury if they changed their testimony during a criminal trial or contempt if they refused to testify. In some cases, civil advocates felt that the victims came away with the feeling that the prosecutor was as controlling and abusive as the defendant is alleged to have been. As noted above, this may often be due to the perception of both the victim and the advocate or attorney to whom this information was given. Some study participants also noted that some of these concerns may arise from the mismatch in the language used by advocates in the domestic violence community and the reality of court proceedings. On one hand, victims are encouraged to take and maintain "control"of their lives. On the other hand, in the courts, and particularly in criminal cases, no one person (victim, defendant, attorneys) is or should be in "control" of the process. These participants noted that the needs and desires of the victim must be considered, but in balance with the rights of the defendant and the interests of the Commonwealth.

Some concern was also expressed by a number of study participants that the assistant district attorneys are so concerned about their guilty/non-guilty ratios that they are unwilling to prosecute cases where the victim wants to go forward, but may not be a sympathetic victim (e.g. has a criminal record, has lost custody

of his or her children to Department of Social Services, or presents poorly.)

A problem identified by assistant district attorneys was the prosecution of violations of Probate and Family Court 209A orders which have amended the District Court orders but are vague, as well as the prosecution of violations of orders that are too detailed. Juries and judges do not want to spend time and mete out punishment for what they see as minor violations ("so he got out of the car when he dropped the kids off, nothing happened, so what"). To be successful, an assistant district attorney needs to educate judges and jurors about what a "minor violation" might mean for a victim of domestic violence. This can be difficult without an expert on the dynamics of relationships which involve domestic violence (e.g. how batterers can continue to exercise control and intimidation even after a separation). Prosecutors may be hesitant to pursue such cases, but are frustrated as they feel that when they do not prosecute violations, victims and defendants may feel that 209A orders can be violated with impunity.

One issue consistently identified by prosecutors and advocates was their dismay at the lack of time they are able to spend on domestic violence cases. With burgeoning court dockets and decreased funds, individual case loads expand. In multiple session courts, assistant district attorneys may also find themselves hurrying back and forth between courtrooms.

> "While being one of the first people the victim encountered in court, I rarely had the appropriate amount of time to explore the victim's situation, safety plan, and explain the court process. This resulted in many victims feeling as if they were without resources or had any power in the system . . . [and] in ostracizing the victim, as he/she can feel as if no one wants to spend the time to help him/her and keeps the court system as a foreign entity, instead of one in which the victim is an integral and empowered part."
>
> Assistant District Attorney

E. SENTENCING

Many concerns were raised about the enforcement of restraining orders through appropriate sentencing, including appropriate terms of probation.

Individual Assessment of Cases. One frequently voiced concern was that judges do not properly assess the level and seriousness of domestic violence in a matter. Many advocates, assistant district attorneys, and criminal defense

attorneys indicated that there is a "cookie cutter" approach with very little attention to the individual circumstances of the case. However, there was disagreement about the implications of this approach. Advocates and assistant district attorneys indicated that judges take the issue of domestic violence too lightly and did not evaluate matters sufficiently to see the potential dangers. On the other hand, defense attorneys indicated that judges are so afraid of seeing their name on the front page of the newspapers, they treat every case as if it is a "classic domestic violence" case when it might really have been a fight between the parties, with fault on both sides, or a one time event. Criminal defense attorneys noted that in some courts, everyone is sent to batterers' intervention programs, whereas advocates expressed the concern that in some courts everyone is sent to anger management programs or no treatment program at all. (See discussion on certified batterers' intervention programs below in this section for further information on this issue). One criminal defense attorney noted that there are now some mental health professionals who conduct assessments, known as Violent Offender Evaluations, and that perhaps this could be modified to assist the courts in sentencing. Others talked about needing standards for the assessment of dangerousness.

Number of Referrals. A concern about excessive referrals was raised as some defendants are required to go to substance abuse treatment, batterers' intervention, GED classes, and possibly additional programs. The concern is that piling a number of requirements on defendants, who may have limited transportation, education or support, sets them up to fail. An experienced probation officer felt, however, that this was actually setting the defendants up to be responsible citizens.

Possible Mitigating Factors. Several criminal defense attorneys discussed the failure of the courts to consider, during trial and at sentencing, the fact that the victim might have invited the defendant to his or her home even though there was a vacate or stay away order. Despite the fact that the order remains in effect, many defendants (and victims) do not understand that accepting such an invitation constitutes a violation of the order. Thus it was felt that violations in these instances should not be punished or that punishment should be mitigated. Defense attorneys also pointed out that many victims with restraining orders continue to live with the defendant. While many factors might contribute to this, which do not minimize the violence or potential for harm, in some cases the restraining order is used as a threat held over the head of the defendant "you do what I want or I am going to get you in trouble." Again, the criminal defense

attorneys felt that this should be considered in the trial or sentencing process.

Incarceration. Others also raised concerns that jail or prison sentences, even short ones, are rarely imposed unless there have been multiple violations or very serious injuries. Assistant district attorneys and victim-witness advocates indicated that they thought the jail sentences were lighter compared to other violent crimes. Others, including a few very experienced assistant district attorneys, felt that the sentencing in domestic violence cases was in line with other crimes.

Increasing Penalties. The need for set consequences and increased penalties (even if slight) for subsequent infractions was noted by many. However, the current sentencing structure can make that difficult. The issue of split sentences came up often. A split sentence is when a judge sentences a defendant to a term of months with a certain number of the months to be served in jail or prison and a certain number of the months suspended or not served, while the defendant is on probation. If a probation violation (which can range from committing a crime to missing a meeting with a probation officer or service provider) occurs and the judge wants to impose jail time as a punishment, the judge must impose all of the remaining unserved sentence even if she/he feels that the amount of time is not appropriate for the particular violation. Some judges realize this when making the initial sentence and, if there is more than one charge, give different sentences on the different charges so as to have more options in the future.

Consequences to Victims. One experienced assistant district attorney stated that in many cases incarceration was actually harmful to the family as a whole. In jail there is little or no batterers' intervention treatment. Women and children can be left destitute without child support. She also noted that her greatest concern was the victim's safety. Unless someone was locked up for the rest of their life, sentences of a few months did nothing to protect the victim in the long run and may actually exacerbate the situation. She felt that there should be consideration given to some kind of community corrections model for domestic violence offenders with intensive supervision, electronic monitoring, substance abuse testing and treatment, and attendance in a batterers' intervention program.

Female Offenders. Criminal defense attorneys and assistant district attorneys reported that female defendants generally received much less punishment than men. Unsupervised probation was very common in cases that would have resulted in much stiffer punishment for a man. In some cases, it was lack of

resources but in others an unwillingness on the part of judges to believe that women can be physically aggressive, controlling, and manipulative in the same manner as male batterers.

Sentencing Guidelines. The District Court Abuse Prevention Professional Development Committee is working on sentencing guidelines that may address a number of these concerns. An education program for District Court judges on sentencing issues was held in June 2003, and work on the issue continues.

Batterers' Intervention Programs. As described by practitioners in the field, certified batterers' intervention programs (BIPs) strive to end domestic violence by providing educational groups for batterers and resource information to partners and victims as part of a coordinated community response. Physical violence is seen as one of the many abusive behaviors chosen by batterers to control their intimate partners, including physical, sexual, verbal, emotional and economic abuse. The goal of batterers' intervention programs is to hold batterers accountable for the violent and abusive choices they make. They teach batterers to recognize how their abuse affects their partners and children and to practice alternatives to abusive behaviors. Programs encourage batterers to develop cooperative and non-abusive forms of communication and to take individual responsibility for change.

Prior to July 2002, a judge had the discretion whether or not to order a person, who had violated a domestic abuse protection order and had no prior record of any crime of violence to enter a batterers' intervention program. Effective July 1, 2002, this provision was amended to read:

> For "any violation of a domestic abuse protection order, the court *shall* order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention.
>
> M.G.L. c. 209A, sec. 7, para. 5. *(emphasis added)*

Defendants may also be ordered to attend a batterers' intervention program as a

condition of probation when convicted of another crime involving domestic violence such assault and battery or threatening. However, attorneys and advocates noted that this was rarely done.

The issue of the lack of sentencing to batterers' intervention programs as a condition of probation was constantly raised by attorneys, advocates and practitioners in the field.

> "Over a particular time-period in the courts that my program covers there were 800 arrests for violations of restraining orders - during the same time period only 200 people were referred to the batterers' intervention program. Courts are not taking advantage of a valuable treatment program."
>
> Batterers' Intervention Program staff person

Many study participants also raised the concern that despite the statutory language, some judges still sentence batterers to anger management programs rather than batterers' intervention programs. Practitioners note significant differences between anger management programs and BIPs. Anger management programs are intended for perpetrators of violence toward strangers or non-intimates. In contrast, certified BIPs work specifically with those who use violence against an intimate partner. Typically, anger management programs are 8-10 sessions long, while certified BIPs provide at least 40 sessions. Unlike group leaders for certified BIPs, anger management program staff are not required to receive domestic violence training, nor must they attempt to contact victims of batterers. Whereas anger management programs are not certified by a state agency and are not subject to independent review of their practices, certified BIPs are subject to annual review by the Department of Public Health. Because of these limitations, many study participants felt that anger management programs should not accept referrals of domestic violence offenders. In fact, many do not accept domestic violence offenders..

A number of reasons for the failure to sentence to batterers' intervention programs were given. Some thought the practice might reflect the fact that judges are really not familiar with the difference between batterers' intervention and anger management programs. Indeed, some judges who participated in this study used the terms interchangeably. Others felt that the judges deferred to the probation officers on this matter, and certain probation officers were either unfamiliar or antagonistic to the programs, citing costs and the length of programs. However, it was also noted by others that the Commonwealth provides programs with funding to serve low income batterers for free or for as

little as $5 per session. At least one long-time advocate for battered women felt that the batterers' intervention programs had not yet made a case for their effectiveness. However, others noted that recent research in the area indicates that batterers' intervention programs have a positive outcome for a majority of participants, especially when part of a coordinated community response model.

Some judges indicated that defense attorneys will not accept batterers' intervention programs as part of a plea, but will only agree to anger management. A judge who wishes to accept a plea, therefore, has his or her hands tied. Other judges responded that they simply will not accept a plea which calls for anger management instead of a batterers' intervention program. They noted that in most cases the defendant is not going to risk a trial. If a referral to a batterers' intervention program is the price of having the court accept a plea, criminal defense attorneys will so advise their clients.

Defense attorneys were concerned that many defendants are sent to batterers' intervention programs even when it might not be appropriate, such as when the parties were in a physical fight, but the classic definitional characteristics of an abusive relationship, most notably the use of violence to control and intimidate, are missing. In other words, not everyone who hits is a batterer, just as only a minimal amount of physical violence does not mean that someone is not a batterer. Accordingly, courts should conduct more careful assessments as to whether a defendant is a "batterer" and whether or not batterers' intervention is appropriate.

Defense attorneys also commented that evaluations of the need for a batterers' intervention program are usually done by the batterers' intervention programs. This, they believe, creates a bias in favor of batterers' intervention being recommended. Pursuant to the Department of Public Health Guidelines, BIPs conduct the evaluations and submit an evaluation summary to the courts. It is the court that then makes the decision as to whether or not the person is appropriate, not the program. In reality, however, it seems unlikely that once a judge decides to refer to a BIP, that she/he would reject their determination that the defendant is appropriate for their services. In addition, it appears that in many cases the decision to require a batterers' intervention program has been made at the time of the sentencing, and the evaluation is a formality.

Criminal defense attorneys and defendants raised the concern that batterers' intervention programs are based on shaming the defendants by making them

admit they are batterers and all-around terrible people. Others asserted that admitting and taking responsibility for the violence is necessary if batterers are ever to change their behaviors and that none of the certified programs take such a simple-minded approach. Participants in BIPs have clearly expressed both views; some feeling that the programs were oppressive, demeaning, and do not assist them in any way, while others who have attended such programs have actually thanked the court as the program made a positive difference in their lives.

Advocates and attorneys will be closely monitoring the effect of the above referenced amendment requiring mandatory referral to batterers' intervention programs for any violations of restraining orders except for the identified circumstances. It remains to be seen whether there are more referrals to batterers' intervention programs, whether there are a significant number of cases in which judges make the findings as to why batterers' intervention programs should not be ordered (particularly in the case of plea bargains), and whether there is an effect on the sentencing practice in cases which involve domestic violence, but do not involve the violation of a domestic violence protection order.

Availability of Batterers' Intervention Programs. A number of prosecutors expressed concern that there are no batterers' intervention or other appropriate programs for women. A number of study participants also noted the need for batterers' intervention programs for juveniles, linguistic minorities and members of the gay, lesbian, bisexual, and transgender community. The Department of Public Health does fund eight certified batterers' intervention programs to provide specialized intervention services to adolescent males who have been abusive toward a dating partner or female family member. Adolescent intervention programs last 10-15 sessions. These services are offered free of charge. In addition, parent education groups are available for parents of boys who attend the adolescent program. A number of certified batterers' intervention programs also have bilingual staff who are able to provide services in the following languages: Cantonese, Haitian Creole, Khmer, Mandarin, Portuguese, and Spanish. Although some certified batterers' intervention programs provide services to gay, lesbian, bisexual, and transgender batterers, practitioners in the field and advocates for this community indicate that resources for these cases are often limited. Many batterers' intervention programs will not accept gay men

into their groups. Resources are also more limited outside the Greater Boston area. It was noted that providing these specialized services requires funding, referrals to sustain the groups and trained facilitators. The right balance between specialized programs and the need and referral of participants cannot always be struck, and current programs do not always meet the current need.

One judge raised the need for essentially in-patient batterers' intervention programs to use when a judge wants to incarcerate someone or at least remove them from the street, but also wants to make sure the defendant gets treatment. Some people pointed to the model of the drunk driving statute with increased penalties set for multiple offenses, but with increased treatment options as well. Thus, a first offender might be required to attend a traditional batterers' intervention program, while a repeat offender might be sentenced to an in-patient treatment program.

Victim Impact Statements. A number of advocates noted how important it is for victims of domestic violence, as part of reclaiming their lives, to be able to give victim impact statements. Over the past few years judges have become better about allowing these statements. However, in many cases they appear to be an afterthought, as it is clear the judge has already made up his or her mind about the sentence.

Immigration Issues. Advocates who work with immigrant and refugee communities indicated that they felt defendants often did not understand the immigration consequences, such as deportation, of being found guilty or pleading guilty to violations of restraining orders. The advocates felt strongly that the consequences need to be explained a number of times in clear and simple terms.

Accord and Satisfaction. Accord and satisfaction is a process in which a defendant can offer payment to a victim in a misdemeanor case and, if the victim agrees, the case will be dismissed. Prosecutors and advocates raised the concern that many batterers pressure their victims into accepting an accord and satisfaction agreement. There is pending legislation, which has been filed in the last several sessions, that would prohibit accord and satisfaction in domestic violence cases.

F. PROBATION OFFICERS

As with the clerks, comments varied widely on the demeanor and competence of probation officers. As with other court personnel, leadership of the judge and how the court handles violations of restraining orders and probation violations in such cases has an effect on the demeanor of probation officers, how seriously they take domestic violence cases, and how they actually handle the cases.

Some probation offices have staff dedicated to or specialized in handling domestic violence cases. Many study participants, both within and without the court system, felt that this is extremely valuable as these probation officers better understand the dynamics of domestic violence, how batterers present, and danger signs. Others indicated because of the ongoing concerns of violence in many relationships, when probation is ordered, it is very important that the supervision be intensive with a probation officer who is able to regularly meet with the probationer and check in with the victim and any treatment program. With the probation offices in some courts overwhelmed with cases, both specialization and intensive probation are difficult to manage. Thus, sufficient staff in probation offices is seen by many as a high priority.

Probation officers indicated that they are sometimes stymied by lack of information. In certain courts they do not have access to the Warrant Management System and sometimes are unaware of an outstanding warrant for a person with whom they are dealing. This information is important to their assessment of a probationer.

There were many complaints about probation officers being too "chummy" with their probationers and not sensitive to the concerns of the victims. Some advocates indicated that some probation officers treat domestic violence offenders the same way they do other probationers; trying to befriend them to provide motivation and support. They were concerned that without an awareness of how intimate partner violence is different than property crimes or violence against non-intimate partners, this "friendly" approach may increase a batterers' confidence (and the victim's fear) that he can get away with anything.

G. PROBATION VIOLATIONS

A number of people pointed to cases where the defendant is ordered to a batterers' intervention program and fails to complete the course or is terminated. In many cases the court's response is to simply drop the batterers' intervention program requirement from the terms of probation. Thus, failing to attend the program actually has a favorable consequence for the defendant.

The question of split sentences, discussed in *Section IV. E.* above, also arose when discussing the handling of probation violations. As noted, there are times when a judge may want to impose jail time as a punishment for the violation, but feels that imposing the remaining suspended sentence would not be appropriate. In some cases, the sentence may be too long, in other cases the consequences to the victim, such as loss of child support or housing, may be an important consideration. Therefore, a number of study participants approved of the practice in which a judge will hold a defendant in jail on the probation surrender and hold off on the probation revocation hearing for a few days or even weeks. Then, after the probation violation hearing, the judge will recommit the defendant to probation. Thus the court has assured the defendant served some jail time, but obviated the need to impose the whole suspended sentence.

H. NOTICE OF RELEASE

Under the Victims Rights Law, victims have a right, upon request, to be notified in advance when an incarcerated defendant is released from prison. M.G.L. c. 258B, sec. 3(t). The Criminal Offender Record Information (CORI) law also mandates that any person who reasonably believes that his/her physical safety is at risk by an inmate shall, upon request, be notified in advance of an offenders release. M.G.L. c. 6, sec. 172c. The Criminal History Systems Board (CHSB) has promulgated regulations regarding the notification process which is carried out by the sheriffs' departments, the Department of Correction, and the Massachusetts Parole Board. To be notified, victims must register with the CHSB, and thus, must know about the program. The Victims Rights Law provides that the prosecutor shall inform the victim of the notification rights and certification process. Advocates usually inform victims of the process, but when advocates are not available, the prosecutors must make sure that this information

is provided. Study participants indicated that as prosecutors are often running out the door to the next case and as the prosecution staff assigned to a case often changes, that it would be helpful if clerks' office staff and probation were also aware of the process and could make sure that victims are aware of the program and how to register.

A problem noted by some study participants was many plaintiffs move and do not provide their new address to the notification program. It was suggested court personnel should remind plaintiffs who come to the court to extend a restraining order to notify the program of their current address.

Participants noted that there is a large hole in the notification system. Massachusetts law allows convicted criminal defendants to petition the court to revise or revoke their sentences. Mass.R.Crim.P. 29. The defendant files a revise or revoke motion and is brought into court for a hearing, at which time the court can revoke the sentence or can revise it to time served. In either case, the defendant is immediately released from custody and able to walk out of the court house. The correctional faculty usually has little or no advance notice of the hearing. A habeas ordering the prison to be brought to court often shows up at the correctional facility a few days in advance of, or sometimes only the day before, the hearing and often does not inform the facility of the nature of the motion. Nor is the correctional facility notified that a revise or revoke motion has been allowed and the defendant has left the court. The correctional facility usually only learns of such a release during the early evening hours when the transportation officers inform the correctional facility that the prisoner was released. There is then a scramble by the correctional facility to notify the victim, but this could be as many as eight to ten hours after release has actually occurred. The CHSB and other custodial authorities feel that there needs to be a procedure for court officers, who are usually the first to be aware of a release, to immediately notify the appropriate correctional authority when a prisoner is released, so that the notification process can begin as soon as possible. Staff charged with the duty of notification have indicated that they would gladly sit down with the Trial Court to work out a system to help close this dangerous gap. While revise and revokes are not commonly allowed, they have occurred in some cases which have involved serious domestic violence.

I. VICTIM WITNESS FEES

Victim-witness advocates expressed a concern that judges are waiving victim witness fees when sentencing in crimes involving domestic violence matters.

They felt that this was another instance of the judges not taking violations of restraining orders as seriously as other crimes. It was noted by others, however, that these fees are often waived regardless of the offense charged when jail time has been ordered.

J. REFERRALS TO DISTRICT ATTORNEYS

Victim-witness advocates in district attorney offices noted that there is a general failure of judges and clerks to refer domestic violence cases with a criminal aspect to the District Attorneys' Office. Other advocates are concerned, however, that such referrals would dissuade many plaintiffs from seeking the protection of a 209A order either out of fear of reprisals, not wanting to become involved in the criminal justice system, or not wanting the batterer to go to jail for emotional and/or financial reasons.

K. CIVIL CONTEMPT, DISTRICT COURT

A court may enforce violations of a 209A order by a proceeding for civil contempt. In some instances, such as where the defendant has violated vacate, refrain from abuse, no contact or gun surrender orders, this contempt can be in addition to or in lieu of criminal proceedings. In other instances, such as where the defendant has violated the order by failing to pay child or spousal support, restitution, attorneys' fees, or to return property, the only method of enforcement is a civil contempt proceeding.

Unlike the Probate and Family Court which has a specific and reasonably simple Complaint for Contempt form and specific dates set aside for the court to hear contempts, there are no such distributed forms or standard procedures in the District Court. The *Guidelines For Judicial Practice: Abuse Prevention Proceedings* 9.00 outlines that a written complaint should be required from the victim (it can be informal) and reasonable notice and opportunity to be heard should be provided to the defendant. Practically, however, without the distribution of a standard form and the development of a standard practice (amount of notice to be given, method of service of notice, which sessions would hear the matter), the system may be too vague, complex or obtuse for victims to proceed and, as noted above in *Section II. M.*, courts are hesitant to grant certain orders without a clear system for enforcement.

V. SYSTEM WIDE AND GENERAL ISSUES

A. TRAINING

The importance of training for judges, as well as all court personnel, came up again and again. The comments were usually raised in the context of specific practices, such as understanding the psychological effects of abuse, why victims of domestic violence present as they often do, the manipulating nature of batterers, and the value of batterers' intervention programs. Many also highlighted the need for training on substance abuse issues (particularly substance abuse by victims of domestic violence as a form of self medication), and mental health issues.

The Trial Court has also been aware of the importance of training and devoted substantial resources in this area. Over the past ten years there has been extensive training and education at all levels of the court system (judges, clerks and registers, counter staff, probation officers). In 1994 and 1995 there were a series of regional, two day conferences for domestic violence teams from each court, an All-Court Conference on Family Violence for all judges, and a series of regional conferences for other staff. The Judicial Institute has continued to fund a significant number of trainings. From 1999 through 2002, 13 programs were presented for judges such as*, Batterers as Parents: Assessing the Risk to Children* and *Meet the Author: Lundy Bancroft, Co-Author of "The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics"*. During this same time period, ten programs were offered (some multiple times) for non-judge trial court personnel such as *Batterers as Parents: Assessing the Risk to Children* (for probation officers) and *209A: On the Front Line* (for support staff and security staff). A number of programs were offered for both judges and probation officers together such as *Criminal Enforcement in Domestic Violence Cases* and *Domestic Violence and Substance Abuse*. In FY 2002, $10,000 was distributed as mini-grants to 14 courts to fund domestic violence educational programs for court staff on topics identified locally. The Office of the Commissioner of Probation does additional extensive training. See *Appendix* pp. 14-15 for further detail on these trainings. Those who have attended the trainings report they are of a consistently high quality. Of particular note, there have been trainings which have specifically addressed assisting *pro se* litigants.

A good example of a training was a comprehensive, full-day program on

domestic violence for new judges. The program was highly praised by those who attended but it was noted that not all of the judges stayed for the full session and some seemed disengaged. There was also some concern that the new judges training, which is a massive undertaking, does not happen every year. Thus some judges at the program had already been on the bench for twelve to eighteen months.

Another example of extensive training is the five-day course, offered each year to probation officers, focusing on issues of domestic violence. This program is funded by federal grant money under the Violence Against Women Act. To reach probation officers who respond to different styles of education, the Training Department of the Office of the Commissioner of Probation has also offered varied types of trainings, including book group sessions.

Trainings where judges get to speak to each other (such as the book group sessions) have received praise. Also thought as effective was the mini-grant program where the education programs take place in the local courts, are given by staff from local courts and programs, and are geared to the specific issues of the locations.

While some in the courts feel that they have been trained "to death", others feel that training needs to be an on-going process. It was noted that as good as the initial training might be, after a couple of years judges and other court staff become "burnt out" handling these difficult and complex cases. Thus some may, for example, become frustrated with plaintiffs who vacate orders and then bring new complaints, forget how both the battered and the batterer might present, stop taking the time needed so both parties feel their positions are being heard, or figuratively throw up their hands in frustration over trying to modify batterers' behavior. Because of this, many in the courts, as well as those who appear before the courts, felt that reminder/refresher trainings would help judges and court personnel keep the issues fresh in their mind, remind them about the various aspects of domestic violence and how it can affects how both parties appear, invigorate them to tackle the issue, and provide an opportunity discuss with their peers questions and concerns.

Many District Court counter staff indicated that they had never received any training in handling 209A matters. Although such training has been offered, counter staff noted there is staff turn-over, and more importantly, though higher positioned staff might go to trainings, lower-level staff who actually process these cases are often not given the chance to attend. This is particularly true in

smaller courts with few staff members. It was notable that whenever more than one counter staff person attended any focus group, they used it as an opportunity to ask each other questions about how their court handled 209A matters.

The issue of mandatory attendance at trainings came up often, with many noting that those who most need the training are those who do not attend. For example, as noted in *Sections III. J. and K.* above, an issue consistently raised was the level of knowledge Probate and Family Court Judges have concerning issues affecting the ability of a batterer to parent. But when the Judicial Institute ran a program with a local expert discussing his recent book addressing the relationship between battering and the ability to parent, very few judges attended, and of those who did, none were from the Probate and Family Court. It was noted by a study participant that this was due in part to the location in Boston, which may have made it difficult for some judges to attend, and the workload faced by judges in some court which makes getting away difficult. Trial assignments made two months in advance can also limit the ability of a judge to attend any particular program. In fact, one particular Probate and Family Court Judge had planned to attend this session but was unable to because of a 209A case that came into the court late that afternoon.

B. GUIDELINES FOR JUDICIAL PRACTICE

In 1996, the Administrative Office of the Trial Court issued *Guidelines For Judicial Practice: Abuse Prevention Proceedings*. Modeled on their precursor, the 1986 *Standards of Judicial Practice: Abuse Prevention Proceedings* issued by the Chief Justice of the District Court, the *Guidelines* cover an extensive array of topics and provide the judiciary and other court personnel with guidance on almost every aspect of handling cases involving domestic violence. Updated in 1997 and 2000, the *Guidelines* provide both statutory and case law, accepted procedures, and best practices, as well as extensive commentary to educate and illuminate the reasons for each guideline. Advocates and practitioners from other states have indicated that the *Guidelines* are considered a national model.

There is generally very high praise from those who have read or used the *Guidelines*. Advocates and lawyers experienced in domestic violence cases do use the *Guidelines* to bring certain issues to the attention of the court or to argue against inappropriate practices. A number of judges indicated that they are

comprehensive and useful.

Unfortunately, not everybody in the court system is aware of or regularly uses the *Guidelines*. For example, a number of people at the Registers' and Assistant Registers' Conference were not sure if they had the *Guidelines,* if they had the updated ones, or where they could be obtained. Private attorneys were the least aware of the *Guidelines*.

Some concerns were expressed about needing a process to make sure they are kept current with new court decisions. The Chief Justice for Administration and Management issues memorandum on new case law to the Chief Justices of the Trial Departments with jurisdiction over 209A matters. The Chief Justices of the Trial Departments in turn distribute this information, but some judges and court personnel indicated that it is not always clear whether these make their way to all of the judges and court staff.

C. DOMESTIC VIOLENCE ROUNDTABLES

In the 1980s, domestic violence roundtables were formed in many communities. Often started as a community response to the issue of domestic violence, these roundtables are composed of service providers, advocates, members of the court, and members of law enforcement involved in issues of domestic violence. Court personnel were also key in forming and funding a number of these roundtables through the Judicial Institute's Domestic Violence Roundtables Technical Assistance Project. Ideally, the roundtables meet on a regular basis and provide a setting in which issues and concerns with the court handling of domestic violence cases can be raised in a non-confrontational manner.

Initially some judges participated in the domestic violence roundtables. In 1998 the SJC Committee on Judicial Ethics issued an opinion concerning the attendance of judges at these roundtables. The opinion noted that the roundtables are usually attended by victim/witness advocates, assistant district attorneys, and probation officers (and in some cases by police officers, court clinic personnel and clerks) with the defense bar rarely attending and issues are often, though but not always, explored from a law enforcement, prosecutory and probationary standpoint. Accordingly, judges who attend may be perceived, as being on the victim's "team" in 209A proceedings. Supreme Judicial Court

Committee on Judicial Ethics Opinion 98-16 (Sept., 15, 1998). The Opinion does, however, acknowledge, that there are institutional benefits to the court system from judges having some contact with advocacy groups regarding issues such as how complaints are processed, the efficiency of special or designated sessions, and the availability of interpreters. Therefore, occasional attendance by judges at roundtables so that such topics can be discussed would be permissible. The Opinion specifically states that participation was permissible when topics of court administration were to be discussed and the private and defense bar could be notified when a judge intended to participate. However, it was uniformly reported that the actual result of the Opinion was that judges no longer attend domestic violence roundtables under any circumstances. Once the judges stopped attending the roundtables, the attendance rate of other court personnel (such as clerks' office staff and probation) fell, affecting the ability to use the roundtables to raise and resolve issues with the court.

In several counties, SAFEPLAN advocates have been organizing special meetings with local judges to specifically address these court administration issues. Advocates felt that these meetings are useful and they greatly appreciate the participation of the judges. However, it was also clear that these meetings did not take the place of and do not have the same value as ongoing roundtables that involve court personnel and can address issues on an ongoing basis.

A number of District Court Judges have also been participating in public forums in which they answered pre-determined questions on issues pertaining to 209A hearings and domestic violence. A number of advocates noted that most District Court Judges have been willing to participate in these forums. It is unclear whether or not Probate and Family Court Judges have been invited to these forums but it was suggested that they should be included.

D. UNDERSTANDING THE COURT PROCESS

One important issue that threads though this entire assessment is how important it is for all of the people involved in domestic violence court cases (advocates, clerks' office staff, judges, probation, attorneys, assistant district attorneys) to take the time to make sure that parties understand the court process and the results of any court hearing. Those who have been involved with the court system for a long time often take for granted that everyone understands the

system and its jargon and has the same expectations as to procedure and results. This is not true, even for those who have education, language skills, and a professional background. For those who have limited language skills, reading ability or education, the court system is a foreign place, much like being in a nightmare where no one speaks your language, but they expect you to follow their orders. When combined with the fact that victims petitioning the court are also in emotionally difficult and physically threatening circumstances, the acquisition and retention of information becomes even more difficult. Finally it is important to note that many parties will not let others (court personnel, judges, advocates, attorneys) know when they do not understand what is happening. Often they do not want to appear stupid or slow, or they are embarrassed about needing to ask so many questions, or they think that they do understand but in fact their understanding is wrong. Many study participants acknowledged that it is the responsibility of those working with parties before the court to make sure that they understand their rights and their responsibilities, the process and potential outcomes, and what is expected of them and others.

This point was forcefully made a number of times during the assessment process. A well educated plaintiff reported that her attorney, the advocate and the assistant district attorney would try to take the time to explain things, but to this day she is not entirely sure how or why certain things happened. The difficulty of understanding the legal system was also brought home at a conference on domestic violence which included a clear and articulate workshop presentation on the immigration consequences of obtaining a restraining order and of being convicted of violating a restraining order. Less than a half hour later a workshop participant reported key information obtained in the workshop to a plenary session, but had several important facts wrong.

E. AREAS FOR FURTHER STUDY

Due to time constraints, this study could not investigate in detail every aspect of how the courts are handling domestic violence cases. The areas that need more study include the following:

1. Juvenile Court

The issue of domestic violence is one of great importance in the Juvenile Courts and comes up in many forms and combinations. It appears in juvenile delinquency cases, care and protection and termination of parental rights cases,

and Children in Need of Services (CHINS) matters. In some instances, the Juvenile Court case may have been brought because one parent is retaliating against the other by involving D.S.S. in the family or by bringing a CHINS complaint. The violence may be perpetrated by one parent against the other, a parent against a child, a child against a parent, siblings against each other, or a teen against an intimate partner.

During the course of this study, there was participation by some who work in or with the Juvenile Court (probation, advocates, court staff), but it is an important issue that needs more in-depth assessment and analysis.

2. Elder Abuse

While raised in some roundtables, there was not sufficient time to look into the particular challenges faced by elders in the courts.

3. Housing Court

There are indications that the issue of domestic violence is one of import in Housing Court. More than one attorney referred to parties in relationships which involved domestic violence ending up in Housing Court when the owner of a house against whom there is a vacate order moves to evict the party who obtained the order and is still residing in the house. In these cases, there was great concern that the parties were being sent to mediation with no acknowledgment of the domestic violence aspect of the matter. Other housing advocates indicated that plaintiffs were being evicted from their homes when they obtained a restraining order, but were awarded no child support. The advocates felt that the Housing Court judges needed more information on how difficult it was to obtain child support quickly and to make some accommodations in these cases.

4. Dorchester District Court

One of the most frequently mentioned domestic violence initiatives is the Judicial Oversight Demonstration Initiative (JOD), a five-year initiative which has created a specialized domestic violence session of the Dorchester District Court. This project is a joint effort of the Office of Justice Programs' Violence Against Women Office and the National Institute of Justice. The domestic violence session hears all *ex parte* and contested civil restraining order cases

brought in the Dorchester District Court. The session also conducts arraignments, bail hearings, pre-trial hearings, probation surrenders, and probation reviews in all cases involving domestic violence. Trials are sent to a separate trial session in the same courthouse. The cases are handled by specially designated and trained domestic violence prosecutors who are responsible for cases from arraignment to disposition. The probation department, which already had a domestic violence unit, has increased staff to allow more victim contact and to increase the degree of supervision of probationers. Probation reviews are conducted at 45, 90 and 180 days after conviction and then scheduled at regular intervals until the end of probation.

In addition, the grant has funded full-time civil advocates working at the courthouse to assist victims with applying for civil restraining orders and safety planning, as well as offering referrals to support services in the community. This work has been done with advocates from many agencies and staff and students from the Northeastern School of Law Domestic Violence Institute. Another initiative has been the informational and referral services for defendants discussed in *Section II. N.* above. The project has also promoted cross agency training opportunities for all of the involved government and private agencies.

Many study participants pointed to the domestic violence sessions as a model. Others had many questions about its operation and were very interested to learn of its effectiveness in addressing domestic violence issues. The Urban Institute in Washington, D.C. will be conducting an evaluation of this and two other demonstration sites. The results of this evaluation are eagerly awaited.

APPENDIX

TABLE OF CONTENTS

DOMESTIC VIOLENCE COURT ASSESSMENT PROJECT
ADVISORY COMMITTEE

Nancy T. Bennett, Esq.
Director of Supervision
Private Counsel Division
Committee for Public Counsel Services

Stephen T. Bocko
Director
Training and Development Department
Office of the Commissioner of Probation

Nancy K. Court
Family Violence & Safe Plan Project Manager
Massachusetts Office for Victim Assistance

Leslie A. Danio
Assistant Clerk-Magistrate
Springfield District Court

Patricia Gould, Esq.
Director of Training
Massachusetts District Attorneys Association

Marilee Kenney Hunt
Director, Violence Against Women
Programs Division
Executive Office of Public Safety

Honorable Paul A. Losapio
First Justice
Uxbridge District Court

Honorable Angela M. Ordonez
Justice
Nantucket Probate and Family Court

Nikki Paratore, PhD
Director,
Batterer Intervention Program Services
Division of Violence and Injury Prevention
MA Department of Public Health

Administrative Office of Trial Court Staff

Lois H. Frankel
Coordinator for Gender Issues
Human Resources Department

Victoria J. Lewis, Esq.
Program Manager
Judicial Institute

Ann A. Meagher, Esq.
Administrative Attorney
Legal Department

DOMESTIC VIOLENCE COURT ASSESSMENT PROJECT: FOCUS GROUPS, INTERVIEWS AND OTHER CONTACTS

Focus Groups (IN ORDER OF OCCURRENCE):

Massachusetts District Attorneys Association Domestic Violence Subgroup
Greater Boston Legal Services
Family Law Task Force (state wide legal services group)
Probate and Family Court Registers and Assistant. Registers Spring Conference
Worcester Domestic Violence Roundtable
District Court Committee on Continuing Education
Probate & Family Court Spring Judicial Education Conference
District Court Professional Development Group on Abuse Prevention Proceedings
Cambridge Domestic Violence Task Force
Dorchester Community Roundtable
Passageway, Brigham and Womens Hospital domestic violence intervention program
SAFEPLAN (Safety Assistance for Every Person Leaving Abuse Now) Regional Coordinators
Southern Worcester County Domestic Violence Roundtable
District Attorney Victim Witness Advocates Directors
Plymouth County VETO (Violence-free Education, Training and Outreach) Roundtable
Coalition of Batterers' Intervention Programs
Guardians ad litem focus group
Salem area focus group:
    Help for Abused Women and Children (HAWC) advocates, Assistant District Attorney, District Attorney victim-witness advocate, legal services attorneys, District Court Assistant Clerk-Magistrate, District Court Support Staff
Office of Commissioner of Probation, Probation Officers Training Group
Criminal Defense Attorneys, Boston area
Western Massachusetts Legal Services
Western Massachusetts District Court support staff -
    Hampden/Hampshire/Franklin/Berkshire counties
Coalition of Supervised Visitation
Bristol County SAFEPLAN Advocates
Worcester County SAFEPLAN Advocates
Independence House, Hyannis, plaintiffs
Immigrant and Refugee Subcommittee, Governor's Commission on Domestic Violence
Haitian Roundtable on Domestic Violence

INTERVIEWS/MEETINGS/TRAININGS (IN ORDER OF OCCURRENCE):

Victoria J. Lewis, Judicial Institute
David Schwartz , Probate and Family Court *Pro Se* Coordinator
Janet Donovan, Senior Legal Counsel, Casa Myrna
Governor's Commission on Domestic Violence
John M. Connors, District Court Administrative Office, Deputy Court Administrator
Cynthia Bauman, Staff attorney,
    Womens Bar Foundation Family Law Project for Battered Women, *Pro Bono* Legal Panel

Elisabeth J. Medvedow, Executive Director Womens Bar Foundation
Domestic Violence for Clerks and Assistant Clerks/General Legal Update, Judicial Institute
Jayne Tyrrell, Massachusetts IOLTA
Priscilla Golding, Executive Director Commission on Status of Women
New Bedford Training for *Pro Bono* attorneys handling domestic cases
Patricia Gould, Director of Training, Massachusetts District Attorneys Association
Christine Butler, private attorney, Supervisor Suffolk Law School 209A clinic
Maureen Monks, private attorney, Supervisor Suffolk Law School 209A clinic
Susan Chandler, Center for Community Health Education and Service
Nancy K. Court, SAFEPLAN Project Manager, Massachusetts Office of Victims Assistance
Nancy Ryan, Executor Director, Cambridge Women's Commission
The Honorable Angela M. Ordonez, Probate and Family Court judge
Judith Beals, Executive Director, Jane Doe
Catherine Greene, Policy Director, Jane Doe
Yale Law School RebLaw Conference, Session on Domestic Violence/restraining orders
James Ptacek, Suffolk University Sociologist, extensive research in Massachusetts Courts
Author, *Battered Women in the Courtroom: The Power of Judicial Response*
Judith Lennett, Consultant for courts and state on domestic violence issues, former legal services attorney
Jeffrey Wolf, Massachusetts Law Reform Institute
Joan Zorza, Domestic violence issues consultant, publishes Domestic Violence Report
Richard Zorza, Consultant in Technology, Nonprofits and Justice/ developed *pro se* on line program for victims of domestic violence
Dorchester Community Round Table
Judicial Orientation, Judicial Institute, full day on domestic violence issues
Carrie Cuthbert, Battered Mothers' Testimony Project, Wellesley Centers for Women
Kim Slote, Battered Mothers' Testimony Project, Wellesley Centers for Women
Virginia Navickas, Executive Director, Daybreak, Worcester advocacy & service provider
Lisa Odgren, Senior SAFEPLAN Advocate, Daybreak, Worcester
Joyce Klemperer, Fund for the City of New York,
Harriet Gianoulis, Fund for the City of New York,
On line *pro se* pilot project for abuse prevention orders
Stephen T. Bocko, Director, Training, Office of Commissioner of Probation
Pauline Quirion, Greater Boston Legal Services, Senior Attorney, Family Law Unit
Massachusetts Office of Victims Assistance (MOVA) Victim's Rights Conference
Commission on Status of Women, Public Hearing, Fitchburg State College
Carlene Pavlos, Director, Division of Violence and Injury Prevention, Department of Public Health
Sybil A. Martin, Program Manager, Judicial Response System, Administrative Office of the Trial Court
Alice Reitz, Manager, Trial Court Child Care Project, Administrative Office of the Trial Court
Lundy Bancroft, author, *The Batterer as Parent*, Judicial Institute Book Group for Judges
Commission on Status of Women, Public Hearing, Lynn
Women's Rights Network Human Rights Tribunal, Testimony by battered mothers
Meeting with the Honorable Mark S. Coven and clerk's office staff, Quincy District Court
Restorative Justice and Domestic Violence Education Seminar, Greenfield
Worcester Probate/District Court meeting, court staff, advocates and police

Domestic Violence Training in Plymouth County (funded by Judicial Institution)
Meetings of Court Department Administrative Office staff working on domestic violence issues
Mark R. Quigley, Probate and Family Court Administrative Office, Administrative Attorney
Margaret Drew, family law practitioner; Northeastern University School of Law Domestic Violence Institute fellow and Supervisor, Domestic Violence District Court Clinic
Day at Dorchester Judicial Oversight Demonstration Project (D.V. Court) - Spoke with the Honorable James W. Coffey; Deirdre Kennedy, Project Coordinator; Assistant District Attorneys; advocates from a number of agencies
Gaye Gentes, Manager of Court Interpreters Services
Betsy McAlister Groves, Child Witness to Violence Project, Boston Medical Center
Haitian Domestic Violence Round Table/Association of Haitian Women, Conference on Domestic Violence
Marian T. Ryan, Chief Domestic Violence Prosecutor, Middlesex County
Summit on Children and the Courts, Children's Law and Policy Initiative at Massachusetts Citizens for Children
Petitioner in 209A, victim in domestic violence criminal cases, party in divorce action
Mark Carmean, Advocate, Gay Men Domestic Violence Project
Advocating for Battered Women and Children in Custody, Visitation and Child Protection Cases, National Coalition Against Domestic Violence education program
Janine Bandino, criminal defense attorney
Petitioner in 209A, victim in domestic violence criminal cases, party in divorce action
Emily Pitt, Violence Recovery Program, Fenway Community Health
Sheara Friend, attorney representing plaintiffs and defendants in cases involving domestic violence, active in Massachusetts Association of Guardians Ad Litem
Presentation by Batterer Mothers' Testimony Project to the Guardian Ad Litem working group of Governors Commission on Domestic Violence
Martha Kurz, Director, Quincy Community Action Project
Elizabeth Cremens, criminal defense attorney
Maria Rodriguez, Domestic Violence Prosecutor, Hampden County District Attorney's Office
The Honorable Sean M. Dunphy, Chief Justice of the Probate and Family Court Department
Deborah L. Propp, District Court Administrative Office, Administrative Attorney
The Honorable Samuel E. Zoll, Chief Justice of the District Court Department

Materials reviewed

Guidelines for Judicial Practice, Abuse Prevention Proceedings
Court Assessment Project/Design recommendations for Victim Witness Waiting Areas
Numerous Judicial Institute training materials
1999 Probate and Family Court Department *Pro Se* Committee report, *Pro Se* Litigants: The Challenge of the Future
Boston Bar Association report on *pro se* litigants
Draft results from Provider Survey, Battered Mothers' Testimony Project, Wellesley Centers for Women
Commission of Status of Women - Eight public hearing reports
Information from other states on *pro se/pro bono* projects
Arizona Judges Bench Book on Domestic Violence
The Children's Bench Book, The Children Law and Policy Initiative, Massachusetts Citizens for Children

Basic Focus Group Guide - Modified based on Group

Introduction

First of all, I would like to thank everyone for coming - I know how busy everyone is these days.

Just to recap why we are here – as you may know over the past ten years, the Massachusetts courts have made a substantial commitment to effectively address the many complex and sensitive issues which arise in cases which involve domestic violence. These have included initiatives to improve the ways in which the courts address such issues and to help victims of domestic violence better understand the court proceedings.

Examples of such initiatives have included trainings, educational materials, informational systems for data gathering and provision, studies of facilities and the issuance of the Guidelines for Judicial Practice: Abuse Prevention Proceedings.

This year the Trial Court has received funds under a federal grant to conduct a statewide assessment of how the Massachusetts court system is currently handling cases which involve domestic violence. We hope to gain some feedback on the effectiveness of the initiatives already undertaken, to identify areas for improvement in these areas and to discover best court practices which can be replicated in the processing of domestic violence cases. It will also help the court to set priorities in determining what can be accomplished in the short and long term.

This needs assessment is why we are here today. To accomplish the goal of the assessment we need the input from major constituencies about your experiences in the courts during domestic violence cases. This includes domestic violence as it affects people in all types of court hearings ranging from abuse protection orders to criminal matters to child protection cases to domestic relations and paternity matters.

In additional to (NAME THIS GROUP) we are reaching out to litigants, police, prosecutors, public and private attorneys, victim services programs, batterer intervention programs, judges and other court personnel.

Basic Ground Rules

My job as moderator is to guide the discussion - but this is also an opportunity for you all to talk to each other as well. My assistant, Marie Jo Luc, will act as a transcriber of the information, ideas, concerns, questions that come up during our discussion.

I also want to ensure you that your names or other specific identifying information will not be made available in any way. This is to be a confidential information gathering process While the information you give will be serve as the basis for the projects final findings - there will be no specific attributions.

Finally, I will be posing to you a series of first broad and then more specific questions. There are no wrong answers, only differing points of view. Please feel free to share your point of view even if it is different than what others have expressed. Both positive and negative comments will help us achieve the goal of determining where we are and where we should go.

QUESTIONS

Introductory question - will be modified depending on the group

1. How are you, in your (employment, role, position) exposed to issues of domestic violence in the court system? In additional to your own (employment, role, position) do you have the opportunity to observe people in other (employment, roles, positions) who interact with the (courts on issues of domestic violence) (with litigants of domestic violence).

Broad questions to start discussion and bring up uncued topics.

I am handing out index cards on which I would like you to identify one or two points in response to the following questions.

2. When the Courts handle cases of domestic violence, what is it that they do that works well and why do you think it works?

3. What does the Court need to do better and who needs to do it?

As you will see, one side of the card is for *works well* and the other side is *needs to do better?* Take a couple of minutes to jot down one or two items on each side and then we will go around the room and read them off..

Broad questions around more specific areas of the court.

4. What has your experience been with the court's ability to serve linguistic minorities.

5. What has been your experience with the court's ability to serve cultural minorities

6. There are multiple courts and multiple jurisdictions that might be involved in any domestic violence matter. How has this come up in the cases handled by your court; specifically, how do the different courts interact and what has been the result?

7. Lots of people are involved in cases that involve domestic violence. Looking at the interaction between judges, yourselves, probation, victim witness advocates, domestic violence shelter advocates, services providers - is there coordination and communication so that the issue of domestic violence can be addressed in an appropriate manner? *(Specific Follow-up. Raise issue of advocates - are they there, are they used, are they useful – or maybe it should be a separate question)?*

8. There are many resources available in the court and the community which help the court process and handle domestic violence cases. These include people/professionals, materials, including videos, service or advocacy programs, trainings and the like. Does your court or do you take advantage of any of these, and if so, which ones? *(Follow-up probe questions - court house advocates, victim services, batterer intervention programs, video For Your Protection - if any are not raised or mentioned will do a follow-up question).*

9. Are courts (judges, probation officers, GAL's) adequately screening and addressing the issue of domestic violence when developing custody, visitation and parenting plans? *(FOLLOW-UP if issues do not come up (1) what has been the response to the presumption that sole/joint custody can not be awarded to an abusive parent when there has been a finding of a pattern or serious incident of abuse - (are hearings held at the temporary order stage, are findings being made) And (2) GAL's - are is anyone challenging GAL reports, are they put on the stand, is anyone holding them accountable, are judges just accepting all recommendations)*.

10. In your experience, what financial issues come up in cases involving domestic violence and how do the courts respond? *(Follow up with questions about child support and other financial awards in 209A orders, are they requested, are they awarded / how domestic violence may affect financial issues in domestic relations cases - particularly ability to obtain adequate representation i.e. pendite lite fees.)*

11. Are there issues of safety in the court house ? How can they be more adequately addressed?

12. If you could make one or two changes to the forms in 209A cases (complaint, affidavit, order, confidentiality forms) or any other court forms that the Probate and Family Court ends up using in domestic violence cases what would you change?

13. Once a 209A or domestic relations case restraining order has been issued, it must then be served. In your experience, how are police getting the orders to serve and are there any systemic problems with service?

14. Then the next issue for the courts is enforcement of that order. Have you had experience with or concern about enforcement - including enforcement of civil aspects of the orders such as child support and enforcement resulting from criminal violations of no abuse, stay away, no contact orders.

15. Some of the issues we have discussed above are subjects addressed by the Guidelines for Judicial Practice, Abuse Prevention Proceedings- in your courts are they used or referred to, and who uses them or has access to them.

SPECIFIC QUESTIONS FOR JUDGES/COURT PERSONNEL

16. Are the courts provided with the other necessary information within the appropriate time frame - information from registries, probation etc? For example in the past there were problems with overnight and weekend orders getting into the system or judges not asking for or being provided with the WMS information but just being provided with the probation records.

17. Can you describe what training you have received to recognize and address the issue of domestic violence? Has this training met your (expectations)(allowed you to feel equipped to handle your responsibilities?) Are there training subjects or methods that you would like to see addressed?

18. **JUDGES** - The lack of access to legal services is constant concern - some particular solutions have been raised or are being used. What is your reaction to the following (need to develop a short description) taking place in your court rooms

Unbundling of legal services
Pro se clinics
Assisted pro se programs
Use of on-line programs or other technology
Block times at court when *pro bono* attorneys are available for more in depth services than available through lawyer for the day programs
Mandatory *pro bono* or contributions to *pro bono*/legal service programs

Only if there is time after previous questions have been asked and before final question

19. Let's look at specific areas of the courts that may not have been raised yet and discuss what efforts by particular courts, agencies, staff, advocates etc. bear examining as best practices and where there are things that need to be done better?

Judges, court officers, judicial secretaries

Clerks, assistance clerks, counter staff

Probation officers (Probate and Family Courts)

Others who interact with the courts - attorneys, advocates, police - How are they helpful to the courts, what can they do to better assist the court process.

(Based on group (for example not ask of court based groups so as not to defect the conversation from the role of the court) and what has come forward in answer to previous questions - may hold this to the end and ask only depending on time

We talked earlier about priorities in the short and long term -

20. If the Court had infinite resources, what is the one thing in which you would invest?

SURVEYS

The survey found on Appendix pp. 10-11 was distributed as follows:

MOVA Victims Rights Conference, April 16, 2002
Massachusetts District Attorneys Association:
Distributed to all assistant district attorneys and victim witness advocates
Jane Doe:
Distributed to all member organizations
Executive Office of Public Safety Program:
Distributed to to V.A.W.A. S.T.O.P. subgrantees

Forty-nine of these surveys were returned.

The survey found on Appendix pp. 12-13 and distributed as follows:

All certified Batterers' Intervention Programs with a request to distribute to program participants.

Twenty-four of these surveys were returned.

GENERALLY DISTRIBUTED SURVEY

Return to this address **Domestic Violence Court Assessment Project** Please Return by Aug. 17
THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
Two Center Plaza
E-mail to: sabino_j1@jud.state.ma.us Boston, Massachusetts 02108

HOW ARE THE COURTS DOING?
TELL US YOUR EXPERIENCES

This short survey is part of a project to find out how courts are currently handling cases involving domestic violence. We hope to find things that the courts are doing well (so that others can learn) as well as things the courts need to do better. For more information about the project, including the complete confidentiality of this information, please see the back of this sheet.

Please check as appropriate:
_____ Person who has sought court protection from domestic violence
_____ Service provider or advocate for persons seeking protection from domestic violence
_____ Others involved with the courts and domestic violence (please describe):_____

Court(s) in which you have appeared or with which you are familiar:_____

Type of matter in which you appeared or with which you are familiar (209A restraining order, divorce, separation, paternity, criminal):_____

What did/does the court do well in handling domestic violence cases?

What, if any, are the major problems encountered when seeking court protection from domestic violence?

What is the one most important thing the courts could do to improve how they handle requests for protection from domestic violence?

Name:(optional)_____ Position:

Return to this address **Domestic Violence Court Assessment Project** Please Return by Aug. 17
THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
Two Center Plaza
Boston, Massachusetts 02108
E-mail to: sabino@jud.state.ma.us

Domestic Violence Court Assessment Project

Project description: Funded by a Violence Against Women Act federal grant, the purpose of this project is to conduct a statewide review and needs assessment of the Trial Court in the area of the delivery of services to victims of domestic violence. We hope that the Project will provide a valuable opportunity not only to identify areas for improvement in the delivery of these services, but also to discover best court practices that can be replicated in the processing of domestic violence cases. The assessment will be conducted through interviews, focus groups, and questionnaires involving people representing the major constituencies involved in domestic violence cases in the Trial Court.

Survey: The purpose of the attached survey is to gather feedback from those most directly affected by the way the court handles matters involving domestic violence - people seeking court protection from domestic violence and those who provide services to and who advocate for them. While short, the survey will provide us with information critical to making a complete report.

Confidentiality: The source of all information gathered will be kept confidential. None of the information will be identified as being from any individual.

Focus Groups: The project is also conducting focus groups. In some cases, existing groups such as domestic violence roundtables and victim support groups are participating as focus groups. Depending on resources, we may be scheduling some additional focus groups. If you know of an existing group that might be willing to be considered as a focus group, please complete the below information. We regret that we will not be able to contact all groups.

I know of an existing group that might be willing to serve as a focus group. _____

Please provide any information you have concerning the group, including if known, name of group, location of meetings, description of who participates in group and person whom the Project can contact concerning group participation.

Any Questions or Comments Concerning this Survey or this Project May Be Directed to:

Jamie Ann Sabino - Domestic Violence Court Assessment Project Coordinator
Direct Line: (617) 878-0463 E-Mail: Sabino_j1@jud.state.ma.us

SURVEY DISTRIBUTED TO DEFENDANTS

Return to this address **Domestic Violence Court Assessment Project** Please Return by Sept. 30
THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
Two Center Plaza
E-mail to: sabino_j1@jud.state.ma.us Boston, Massachusetts 02108

HOW ARE THE COURTS DOING? TELL US YOUR EXPERIENCES

HAVE YOU BEEN BEFORE THE COURT IN A RESTRAINING ORDER CASE? HAS DOMESTIC VIOLENCE BEEN AN ISSUE IN A COURT CASE?

Please share your experience and help the courts.

The Domestic Violence Court Assessment Project is a statewide review of the Trial Court's performance with regard to domestic violence. Funded by a Violence Against Women Act federal grant, we are talking to people all across the state including judges, court staff, advocates, lawyers, shelter providers and – importantly - people who must appear before the court.

This short survey is part of this Project to find out how courts are currently handling cases involving allegations of domestic violence. For more information about the project, including the complete confidentiality of this information, please see the back of this sheet.

Court(s) in which you have appeared or with which you are familiar:_____
Type of matter in which you appeared (209A restraining order, divorce, separation, paternity, criminal):_____

What did/does the court do well in handling your domestic violence case?

What, if any, are the major problems you encountered when appearing in or dealing with the courts?

What is the one most important thing the courts could do to improve how they handle cases involving allegations of domestic violence?

Name (optional)_____ Additional comments may be included on back.

Return to this address **Domestic Violence Court Assessment Project** **Please Return by Sept. 30**

THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
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Any Questions or Comments Concerning this Survey or this Project May Be Directed to:

Jamie Ann Sabino - Domestic Violence Court Assessment Project Coordinator
Direct Line: (617) 878-0463 E-Mail: Sabino_j1@jud.state.ma.us

Additional Comments:

JUDICIAL INSTITUTE PROGRAMS

Domestic violence and sexual assault programs offered by the Judicial Institute the past three years (2000-2003) have included:

Programs for Judges

Batterers as Parents: Assessing the Risk to Children

Criminal Enforcement in Domestic Violence Cases

Domestic Violence and Substance Abuse

Domestic Violence and Adolescents

Stranger and Non-Stranger Sexual Assault: Balancing Culture and the Law

Privilege Issues Under Bishop and Fuller

Meet the Author: James Ptacek, Author of Battered Women in the Courtroom: The Power of Judicial Response

Meet the Author: Lundy Bancroft, Co-Author of The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics

Intensive Seminar on Issues in Sexual Assault Cases

Judges attending our bi-annual *Judicial Orientation* program for newly appointed judges receive a full day of *Orientation to Domestic Violence Practice*.

The Administrative Office of the Trial Court and the Judicial Institute offer an annual one-day program on the Judicial Response System which also covers domestic violence issues.

Management training for presiding judges included a segment on handling domestic violence in the workplace for the first time in FY 2002.

Programs for Non-Judge Trial Court Personnel

Batterers as Parents: Assessing the Risk to Children (Probation Officers)

Criminal Enforcement in Domestic Violence Cases (Chief Probation Officers)

Domestic Violence and Substance Abuse (Probation Officers)

Domestic Violence and Adolescents (Probation Officers)

Domestic Violence Issues for Clerks (District Court Clerk-Magistrates and Assistant Clerks)

209A: On the Front Line (District Court and Probate and Family Court Support Staff, Court Officers and Associate Court Officers)

Nuts and Bolts of 209A (District Court Support Staff)

All new Trial Court support staff from all departments attend *Domestic Violence 101 Workshops* as part of New Employee Orientation, as do all new Court Officers and Associate Court Officers as part of their orientation program.

Clerk-Magistrates and Chief Probation Officers also attend the management training which this year included the domestic violence in the workplace segment.

In FY 2002, the Judicial Institute distributed approximately $10,000.00 to 14 courts throughout the Commonwealth in a mini-grant program to fund domestic violence educational programs for court staff on topics identified locally. Programs ranged from a full day program in Leominster to workshops on child witnesses to domestic violence to a presentation on the new Response Project at Hampshire Probate and Family Court to a discussion of restorative justice and domestic violence in Greenfield.

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c.209A) Page 1 of 2

COURT USE ONLY – DOCKET NO.

TRIAL COURT OF MASSACHUSETTS

A ☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT ☐ PROBATE & FAMILY COURT ☐ SUPERIOR COURT _____ DIVISION

B Name of Plaintiff (person seeking protection)

C Plaintiff's Address. DO NOT complete if the Plaintiff is asking the Court to keep it confidential. *See K. 4. below.*

Daytime Phone No. ( )

If the Plaintiff left a former residence to avoid abuse, write that address here:

D I ☐ am over the age of eighteen.
I ☐ am under the age of eighteen, and _____, my _____ (relationship to Plaintiff) has filed this complaint for me.
The Defendant ☐ is ☐ is not under the age of eighteen.

E To my knowledge, the Defendant possesses the following guns, ammunition, firearms identification card, and/or license to carry:

F Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for divorce, annulment, separate support, legal separation or abuse prevention? ☐ No ☐ Yes
If Yes, give Court, type of case, date, and (if available) docket no.

G Name of Defendant (person accused of abuse)

Def. Date of Birth | Defendant's Alias, if any

Defendant's Address | Day Phone ( )

Sex: ☐ M ☐ F

Social Security # | Place of Birth

Defendant's Mother's Maiden Name (first & last)

Defendant's Father's Name (first & last)

H The Defendant and Plaintiff:
☐ are currently married to each other
☐ were formerly married to each other
☐ are not married but we are related to each other by blood or marriage; specifically, the Defendant is my _____
☐ are the parents of one or more children
☐ are not related but live in the same household
☐ were formerly members of the same household
☐ are or were in a dating or engagement relationship.

I Does the Plaintiff have any children? ☐ No ☐ Yes If yes, the Plaintiff shall complete the appropriate parts of Page 2.

J On or about (dates) _____ I suffered abuse when the Defendant:
☐ attempted to cause me physical harm
☐ caused me physical harm
☐ placed me in fear of imminent serious physical harm
☐ caused me to engage in sexual relations by force, threat of force or duress

K THEREFORE, I ASK THE COURT TO ORDER:
☐ 1. the Defendant to stop abusing me by harming, threatening or attempting to harm me physically, or placing me in fear of imminent serious physical harm, or by using force, threat or duress to make me engage in sexual relations unwillingly.
☐ 2. the Defendant not to contact me, unless authorized to do so by the Court.
☐ 3. the Defendant to leave and remain away from my residence which is located at:
_____
If this is an apartment building or other multiple family dwelling, check here ☐
☐ 4. that my address be impounded to prevent its disclosure to the Defendant, the Defendant's attorney, or the public. *Attach Request for Address Impoundment form to this Complaint.*
☐ 5. the Defendant to leave and remain away from my workplace which is located at:
_____
☐ 6. the Defendant to pay me $_____ in compensation for the following losses suffered as a direct result of the abuse:
_____
You may not obtain an Order from the Boston Municipal Court or a District or Superior Court covering the following item 7 if there is a prior or pending Order for support from the Probate and Family Court.
☐ 7. the Defendant, who has a legal obligation to do so, to pay temporary support for me.
☐ 8. the relief requested on page two of this Complaint pertaining to my minor child or children.
☐ 9. the following: _____
_____
☐ 10. the relief I have requested, except for temporary support for me and/or my child(ren) and for compensation for losses suffered, without advance notice to the Defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and I must appear in Court on that day if I wish the Order to be continued.

DATE | PLAINTIFF'S SIGNATURE
X

Please complete affidavit on reverse of this page

This is a request for a civil order to protect the Plaintiff from future abuse. The actions of the Defendant may also constitute a crime subject to criminal penalties. For information about filing a criminal complaint, you can talk with the District Attorney's Office for the location where the alleged abuse occurred.

FA 1 (9/95)

COURT COPY

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c.209A) Page 2 of 2	COURT USE ONLY – DOCKET NO.	TRIAL COURT OF MASSACHUSETTS

ISSUES PERTAINING TO CHILDREN

A. **RELATED PROCEEDINGS**. Is there any proceeding that the Plaintiff knows of or has participated in which is pending or has been concluded in any Court in the Commonwealth or any other state or country involving the care or custody of the child or children of the parties? ☐ YES ☐ NO
If Yes, the Plaintiff shall complete and file with this Complaint an Affidavit Disclosing Care or Custody Proceedings as required by Trial Court Uniform Rule IV, and provide copies of documents required by the Rule. This Affidavit and related information are available from the office of the Clerk-Magistrate or Register of Probate of the Court.

B. **RELATED PROCEEDINGS.** Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for paternity: ☐ YES ☐ NO

C. **CUSTODY.**
The Plaintiff may not obtain an Order from the Boston Municipal Court or a District or Superior Court for custody if there is a prior or pending Order for custody from the Probate and Family Court or Juvenile Court.
☐ I request custody of the following minor child or children of the parties:

NAME	DATE OF BIRTH	NAME	DATE OF BIRTH

D. **CONTACT WITH CHILDREN.** I ask the Court to order the Defendant not to contact the following child or children unless authorized to do so by the Court:

NAME	NAME

The specific reasons for this request are: _____

_____

_____

_____

If the Plaintiff alleges that the Defendant has abused the above-named child or children, a separate Complaint may be filed on behalf of each child.

E. **VISITATION.** If the Plaintiff is filing this Complaint in the Probate and Family Court, the Plaintiff may request a Visitation Order. Such Orders are not available in other Courts. Regarding visitation, I ask the Court to
☐ permit visitation.
☐ order no visitation between the Defendant and our minor child or children.
☐ permit visitation only at the following visitation center: _____
_____ to be paid for by _____ (name).
☐ permit only visitation supervised by _____ (name)
at the following times: _____
_____ to be paid for by _____ (name).
☐ order visitation only if a third party, _____ (name), picks up and drops off our minor child or children.

F. **TEMPORARY SUPPORT.**
The Plaintiff may not obtain an Order from the Boston Municipal Court or a District or Superior Court for temporary support if there is a prior or pending Order for support from the Probate and Family Court or Juvenile Court.

☐ I ask the Court to order the Defendant, who has a legal obligation to do so, to pay temporary support for any children in my custody.

DATE	PLAINTIFF'S SIGNATURE
	X

ABUSE PREVENTION ORDER
(G.L. c. 209A) Page 1 of 2

DOCKET NO.

TRIAL COURT OF MASSACHUSETTS

PLAINTIFF'S NAME	DEFT. INFO.	Defendant's Name and Address	Alias, if any	
NAME & ADDRESS OF COURT			Date of Birth	Place of Birth
			SS #	Daytime Phone # ( )
		Sex ☐ M ☐ F	Mother's Maiden Name (First & Last)	
			Father's Name (First & Last)	

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.

A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT: *(only those items checked shall apply)*

☐ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of abuse.

☐ This Order was communicated by telephone from the Judge named below to:
Police Dept._____Police Officer_____

☐ **1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF** by harming, threatening or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the Plaintiff engage in sexual relations unwillingly.

☐ **2. YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF,** except as permitted in 8 below or for notification of court proceedings as permitted in this section, either in person, by telephone, in writing or otherwise, either directly or through someone else, and to stay at least_____yards from the Plaintiff even if the Plaintiff seems to allow or request contact. Notification of court proceedings is permissible only by mail, or by sheriff or other authorized officer when required by statute or rule.

☐ **3. YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE,** except as permitted in 8 below, located at _____or wherever else you may have reason to know the Plaintiff may reside. The Court also **ORDERS** you (a) to surrender any keys to that residence to the Plaintiff, (b) not to damage any belongings of the Plaintiff or any other occupant, (c) not to shut off or cause to be shut off any utilities or mail delivery to the Plaintiff, and (d) not to interfere in any way with the Plaintiff's right to possess that residence, except by appropriate legal proceedings.

☐ If this box is checked, the Court also **ORDERS** you to immediately leave and remain away from the entire apartment building or other multiple family dwelling in which the Plaintiff's residence is located.

☐ **4. PLAINTIFF'S ADDRESS IMPOUNDED.** The Court **ORDERS** that the address of the Plaintiff's residence is to be impounded by the Clerk-Magistrate or Register of Probate so that it is not disclosed to you, your attorney, or the public.

☐ **5. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE** located at_____

☐ **6. CUSTODY OF THE FOLLOWING CHILDREN IS AWARDED TO THE PLAINTIFF:**

NAME		DOB		NAME		DOB	

☐ **7. YOU ARE ORDERED NOT TO CONTACT THE CHILDREN LISTED ABOVE OR ANY CHILDREN IN THE PLAINTIFF'S CUSTODY LISTED BELOW,** either in person, by telephone, in writing or otherwise, either directly or through someone else, and to stay at least _____ yards away from them unless you receive written permission from the Court to do otherwise.
☐ You are also ordered to stay away from the following school, day care, other: _____

NAME		DOB		NAME		DOB	

☐ **8. VISITATION WITH THE CHILDREN LISTED IN SECTION 6 IS PERMITTED ONLY AS FOLLOWS (may be ordered by Probate and Family Court only):**

_____
_____
☐ Visitation is only allowed if supervised and in the presence of _____at the following times _____
_____ to be paid for by _____
☐ Transportation of children to and from this visitation is to be done by _____(third party), and not by you.
☐ You may contact the Plaintiff by telephone only to arrange this visitation.

☐ **9. YOU ARE ORDERED TO PAY SUPPORT** for ☐ the Plaintiff and ☐ your child or children listed above, at the rate of $ _____per ☐ week or per ☐_____, beginning_____, 199___ ☐ directly to the Plaintiff ☐ through the Probation Office of this Court ☐ through the Massachusetts Department of Revenue ☐ by income assignment.

☐ **10. YOU MAY PICK UP YOUR PERSONAL BELONGINGS** in the company of police at a time agreed by the Plaintiff.

☐ **11. YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF** for $_____in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 199___ ☐ directly to the Plaintiff ☐ through the Probation Office of this Court.

☐ **12. THERE IS A SUBSTANTIAL LIKELIHOOD OF IMMEDIATE DANGER OF ABUSE. YOU ARE ORDERED TO IMMEDIATELY SURRENDER** to the _____Police Department all guns, ammunition, gun licenses and FID cards. Your license to carry a gun, if any, and your FID card, if any, are suspended immediately.
▶ You may ask the Court to change this Order by going to the Court and filing a petition. The Court will schedule a hearing on your petition.
▶ You must immediately surrender the items listed above, and also comply with all other Orders in this case, whether or not you file a petition.
▶ If you need a firearm, rifle, shotgun, machine gun, or ammunition for your job, you may ask for a hearing within two days.

☐ **13. YOU ARE ALSO ORDERED** _____
_____

The Plaintiff must appear at scheduled hearings, or this Order may be vacated. The Defendant may appear, with or without attorney, to oppose any extension or modification of this Order. If the Defendant does not appear, the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify this Order before its scheduled expiration date.

COURT COPY

ABUSE PREVENTION ORDER (G.L. c. 209A) Page 2 of 2	DOCKET NO.	TRIAL COURT OF MASSACHUSETTS

14. Police reports are on file at the _____ Police Department.

15. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST:

_____ (DOCKET #s) _____ (PCF #)

☐ **16.** An imminent threat of bodily injury exists to the petitioner. Notice issued to _____ Police Department(s) by ☐ telephone ☐ other _____.

☐ B. NOTICE TO LAW ENFORCEMENT.

1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked ☐, service may instead be made by leaving such copies at the Defendant's address shown on Page 1 but only if the officer is unable to deliver such copies in hand to the Defendant.

☐ 2. Defendant Information Form accompanies this Order.

☐ 3. Defendant has been served in hand by the Court's designee: Name _____ Date _____

DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.	EXPIRATION DATE OF ORDER at 4 P.M.	NEXT HEARING DATE: at _____ ☐ A.M. ☐ P.M. in Courtroom _____
The above and any subsequent Orders expire on the expiration dates indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated.			SIGNATURE/NAME OF JUDGE

☐ C. PRIOR COURT ORDER EXTENDED.

After a hearing at which the Defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order dated _____, 199____ shall continue in effect until the next expiration date below ☐ without modification ☐ with the following modification(s):

_____

_____

☐ Return of items ordered surrendered or suspended in A.12. on Page 1 presents a likelihood of abuse to the Plaintiff.

DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.	EXPIRATION DATE OF ORDER , at 4 P.M.	NEXT HEARING DATE: at _____ ☐ A.M. ☐ P.M. in Courtroom _____
SIGNATURE/NAME OF JUDGE			

☐ D. FURTHER EXTENSION.

After a hearing at which the Defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order dated _____, 199____ shall continue in effect until the next expiration date below ☐ without modification ☐ with the following modification(s):

_____

_____

☐ Return of items ordered surrendered or suspended in A.12. on Page 1 presents a likelihood of abuse to the Plaintiff.

DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.	EXPIRATION DATE OF ORDER at 4 P.M.	NEXT HEARING DATE: at _____ ☐ A.M. ☐ P.M. in Courtroom _____
SIGNATURE/NAME OF JUDGE			

☐ E. PRIOR COURT ORDER MODIFIED.

Upon motion by the ☐ Plaintiff ☐ Defendant and after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear, the Court has ORDERED that the prior Order dated _____, 199____ shall be modified as indicated below:

_____

_____

☐ Return of items ordered surrendered or suspended in A.12. on Page 1 presents a likelihood of abuse to the Plaintiff.

DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.	EXPIRATION DATE OF ORDER at 4 P.M.	NEXT HEARING DATE: at _____ ☐ A.M. ☐ P.M. in Courtroom _____
SIGNATURE/NAME OF JUDGE			

☐ F. PRIOR COURT ORDER VACATED.

This Court's prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.

☐ VACATED AT PLAINTIFF'S REQUEST.

SIGNATURE/NAME OF JUDGE	DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.
WITNESS - FIRST OR CHIEF JUSTICE	A true copy, attest (Asst.) Clerk Magistrate/ (Asst.) Register of Probate	

TRIAL COURT OF THE COMMONWEALTH

APPLICATION FOR ABUSE PREVENTION ORDER
ABUSE PREVENTION ORDER

FOR USE BY POLICE DEPARTMENTS AFTER COURT HOURS

When the Court is closed for business, any Justice assigned to the Judicial Response System may grant relief to a Plaintiff if the Plaintiff demonstrates a substantial likelihood of immediate danger of abuse. "In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next Court day to the clerk-magistrate of the Court having venue and jurisdiction over the matter...

When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the Court or the emergency response judge shall issue, upon the request of the victim, a written no-contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no-contact order." -G.L. c. 209A, §§ 5 & 6

INSTRUCTIONS FOR POLICE OFFICERS

USE OF THIS FORMS PACKAGE. This forms package has been promulgated by the Chief Justice for Administration and Management of the Massachusetts Trial Court pursuant to G.L. c. 209A, §§ 5 & 6 for use by police departments to record an Abuse Prevention Order issued by a Judge over the telephone when the Court is closed for business. Additional supplies of this forms package may be obtained from your local District Court. Please keep any supplies of these forms under adequate security to prevent misuse.

1. **COMPLAINT.** It is preferable to have the Plaintiff complete and sign the Complaint form set before contacting a Judge, if the Plaintiff is able to do so. Plaintiffs who have children must fill out the appropriate parts of the second page. Please print in ballpoint pen and press hard enough so that all four parts (white, pink, yellow and white) are legible. There are instructions which the Plaintiff may refer to on the back of the Complaint form set.

   In appropriate circumstances, a Judge may issue an Order without the Plaintiff having completed and signed a written Complaint. If the Judge does so, please discard the Complaint form set and advise the Plaintiff that G. L. c. 209A, § 5 requires the Plaintiff to appear in Court on the next business day to file such a Complaint.

2. **ADDRESS IMPOUNDMENT.** If the Plaintiff wishes to keep her/his address confidential, you are to provide the Plaintiff with the Request for Address Impoundment form, seal the completed form in an envelope marked "PLAINTIFF'S ADDRESS - CONFIDENTIAL," and attach the envelope to the Court (white) copy of the Complaint.

3. **AFFIDAVIT.** After the Complaint form set has been completed and signed, separate the four parts from the form stub that holds them together. Turn over the original (white) part and ask the Plaintiff to describe the details of the abuse on the Affidavit form printed there. When the Affidavit is complete, please indicate by your signature that you have witnessed the Plaintiff's signature on the Affidavit.

   In appropriate circumstances, a Judge may dispense with the need for an Affidavit. If the Judge does so, leave the Affidavit form blank.

4. **ORDER.** Read or summarize the Complaint and Affidavit over the telephone as requested by the Judge. If the Judge issues an Order, please complete Sections A and B of the Order form set, item by item, as the Judge directs. Please print in ballpoint pen and press hard enough so that all six parts (white, pink, yellow, blue, green and white) are legible. Leave the space for "Docket No." blank, but please remember to enter the name and address of the Court where the Judge makes the Order returnable. Print your name and police department, and print the name of the Judge issuing the Order, in the appropriate spaces. At the bottom of the second page of the Order, print the name of the "First or Chief Justice" as indicated by the issuing Judge. Leave blank the space for the Clerk-Magistrate or the Register of Probate to attest the Order.

5. **DEFENDANT INFORMATION FORM.** Provide the Plaintiff with the Defendant Information Form and ensure that the Plaintiff completes it to the best of that person's ability.

6. **COLLATING AND DISTRIBUTING COPIES.** Separate the six parts of each page of the Order form set from the form stub that holds them together. If the Plaintiff has completed the Complaint form, match up and staple together the copies of the Complaint form with the matching color copies of the Order form: the white (Court) copies, the pink (Plaintiff's) copies, the yellow (Defendant's) copies, and the white (Probation) copies.

   Give the **pink** copies of the Complaint and Order to the Plaintiff.

   Deliver the **white (Court)** copies and the **white (Probation)** copies of the Complaint and Order on the next business day to the Clerk-Magistrate or Register of the Court where the Order is returnable. If the Plaintiff's address has been impounded, please attach the Request for Address Impoundment form as instructed above.

   Arrange for the **yellow** copies of the Complaint and Order to be served on the Defendant as soon as possible. If the service on the Defendant cannot be made before the date and time of hearing shown in the Order, service of additional Orders may be necessary.

   The two remaining copies of the Order are for police use: the **blue** copy of the Order is for your records; the **green** copy of the Order may be used for the return of service that must be filed with the Court.

DEFENDANT INFORMATION FORM IN RESTRAINING ORDER CASES (Provided by Plaintiff)	DOCKET N0. – COURT USE ONLY	TRIAL COURT OF MASSACHUSETTS
DEFENDANT'S NAME	DEFENDANT'S DOB	COURT DIVISION

ATTENTION: PLEASE PROVIDE AS MUCH INFORMATION AS POSSIBLE. IF A PROTECTIVE ORDER IS ISSUED, THIS INFORMATION WILL HELP POLICE FIND THE DEFENDANT AND SERVE THE DEFENDANT WITH A COPY OF THE ORDER.

OTHER NAMES USED BY THE DEFENDANT:

HOME ADDRESS _____
Number Street City State Zip

IMPORTANT: Apartment No. _____ **Floor No.** _____ **Name on Door/Mailbox** _____

WORK ADDRESS _____
Name of Company / Employer

_____
Number Street City State Zip

Department _____ Title _____

Tel. No. (_____)_____ Work Hours _____

OTHER PLACES DEFENDANT MAY BE FOUND (Friends, bars, relatives, hangouts)

BEST PLACE TO FIND DEFENDANT **BEST TIMES**

DEFENDANT UNDERSTANDS ENGLISH? ☐ Yes ☐ No **IF NO, WHAT LANGUAGES?:**

DESCRIPTION FOR PURPOSES OF SERVICE ☐ Male ☐ Female ☐ Race _____

Eyes _____ Hair_____Height _____Weight _____Build_____

Other _____(Beard, glasses, scars, tattoos, acne, hairstyle)

PHOTOGRAPH AVAILABLE? ☐ Yes ☐ No (Photographs are very helpful to police in identifying Defendants.)

MOTOR VEHICLE: License Plate #_____Year _____Make_____Model _____Color_____

DOES DEFENDANT HAVE: (describe very briefly)

I . A history of violence towards police officers? ☐ No ☐ Yes

2. A history of using/abusing drugs or alcohol? ☐ No ☐ Yes What kind?

3. Access to guns, a license to carry, or possess a gun? ☐ No ☐ Yes What kind?

4. Psychiatric/Emotional Problems? (Treated/Hospitalized?) ☐ No ☐ Yes What kind?

ANY OTHER INFORMATION WHICH MIGHT BE HELPFUL IN LOCATING THE DEFENDANT

PLAINTIFF'S NAME _____

DATE	PLAINTIFF'S SIGNATURE
	X

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A)	Docket No.	TRIAL COURT OF MASSACHUSETTS

CONFIDENTIAL INFORMATION
Statute 2000, Chapter 236, §24

1. Plaintiff's name: _____

2. Plaintiff's residential address: _____

_____

3. Plaintiff's residential telephone number: _____

4. Plaintiff's workplace name: _____

_____

5. Plaintiff's workplace address: _____

_____

6. Plaintiff's workplace telephone number: _____

7. Persons authorized by the plaintiff to obtain access to this confidential information:

_____

_____

_____

The information that you provide above is confidential and will be provided only to persons authorized by you in # 7 above, to certain individuals if necessary in the performance of their duties and to the defendant and his or her attorney, as the law may require. Your residential address and workplace address will appear on the court order and be accessible to the defendant and the defendant's attorney unless you specifically request that this information be withheld from the order. At your request, the court may also impound certain information in this case. Access to impounded information would be determined by the court. Please ask the staff of the Clerk Magistrate or Register of Probate of the court in which you are filing a Complaint For Protection From Abuse if you would like to request impoundment of certain information.

_____ _____

Plaintiff's signature Date

BEFORE COMPLETING, READ INSTRUCTIONS ON BACK OF PART 2
TYPE OR PRINT WITH A BALLPOINT PEN - - PRESS HARD

AFFIDAVIT DISCLOSING CARE OR CUSTODY PROCEEDINGS Pursuant to Trial Court Rule IV	**TRIAL COURT OF MASSACHUSETTS** Name Of Case _____	**DOCKET NUMBER** _____

☐ Boston Municipal Court	☐ District Court _____ Division	☐ Juvenile Court _____ Division	☐ Probate & Family Court _____ Division	☐ Superior Court _____ Division

Section 1 I, _____ (NAME OF PARTY (PRINT)), hereby declare, to the best of my knowledge, information, and belief that all the information on this form is true and complete:

Section 2 The name(s) of the child(ren) whose care or custody is at issue in this case are:

A. _____ (LAST, FIRST) B. _____ (LAST, FIRST) C. _____ (LAST, FIRST)

Use only the letter appearing in front of the child's name above when referring to that child in completing the remaining sections.

Section 3 The party filing this affidavit may request certain addresses to be kept confidential if the address is a shelter for battered persons and their dependent child(ren), **or** the party filing this affidavit believes that he/she or the child(ren) are in danger of physical or emotional abuse, **or** the party is filing an action under G.L.c.209A. **If you believe that this provision applies to you, check the box at the right, complete sections 10 and 11 on the reverse side of this page and DO NOT complete sections 4 and 5 below.** ☐

Section 4 The address(es) of the above-named child(ren) whose care or custody is at issue in this case are:

	Address(es)	**Address(es) During Last 2 Years, If Different**
CHILD A.	_____	_____
CHILD B.	_____	_____
CHILD C.	_____	_____

Section 5 My address is: _____

Section 6 I ☐ **have** ☐ **have not** participated in and I ☐ **know** ☐ **do not know** of other care or custody proceedings involving the above-named child(ren) in Massachusetts or in any other state or country.

Certified copies of any pleadings or determinations in a care or custody proceeding outside of Massachusetts listed in sections 7 and 8 must be filed with this affidavit unless already filed with this court or an extension for filing these documents has been granted by this court.

Section 7 The following is a list of all pending or concluded proceedings I have participated in or know of involving the care or custody of the above-named child(ren):

Letter of Child	**Court**	**Docket No.**	**Status of Case (Custody awarded to) (Date of award)**	**[W]itness [P]arty [O]ther [N]one**
CHILD ____	_____	_____	_____	[ ]
CHILD ____	_____	_____	_____	[ ]
CHILD ____	_____	_____	_____	[ ]

Section 8 The names and addresses of parties to care or custody proceedings involving any of the above-named child(ren) or those claiming a legal right to these child(ren) during the last two years (not including myself) are:

Letter of Child	**Name of Party/Claimant**	**Current (or last known) Address of Party/Claimant**
CHILD ____	_____	_____
CHILD ____	_____	_____
CHILD ____	_____	_____

Section 9 **If the box at the right is checked, this affidavit discloses the adoption of one or more of the above-named child(ren) and I am requesting the court to impound this affidavit. See instructions.** ☐

This affidavit must be personally signed by the party listed in section 1 above, unless he/she is under 18 years of age or has been adjudged incompetent in which case the attorney of record must sign. A revised affidavit must be filed with the court if new information is discovered subsequent to this filing.

Signed this _____ day of _____, 19____ under the penalties of perjury.

X _____
SIGNATURE OF PARTY OR ATTORNEY OF RECORD FOR INCOMPETENT/JUVENILE

_____
PRINTED NAME OF PERSON SIGNING

_____
ADDRESS OF ATTORNEY OF RECORD FOR INCOMPETENT/JUVENILE

THE PARTY FILING THIS AFFIDAVIT MUST FURNISH A COPY OF IT TO ALL OTHER PARTIES TO THIS ACTION.

ADDRESSES TO BE KEPT CONFIDENTIAL

ADDRESSES TO BE KEPT CONFIDENTIAL

The party filing this affidavit may request certain address(es) to be kept confidential if the address is a shelter for battered persons and their dependent child(ren), **or** the party filing this affidavit believes that he/she or the child(ren) are in danger of physical or emotional abuse, **or** the party is filing an action under G.L. c. 209A.

If you checked the box in section 3 indicating that you believe the above provision applies to you, complete sections 10 and 11 below, and DO NOT complete sections 4 and 5.

Section 10

The address(es) of the child(ren) listed in section 2 whose care or custody is at issue in this case are:

Child(ren)	Address(es)	Address(es) During Last 2 Years, If Different
Child A.	Street Address	Street Address
	City, State, Zip Code	City, State, Zip Code
Child B.	Street Address	Street Address
	City, State, Zip Code	City, State, Zip Code
Child C.	Street Address	Street Address
	City, State, Zip Code	City, State, Zip Code

Section 11

My address is: _____
Street Address, City, State, Zip Code

Section 12

LIST OF ATTORNEYS AND GUARDIANS AD LITEM/INVESTIGATORS

Please list the names of all attorneys and guardians ad litem involved in the pending proceedings listed in section 7.

1. ☐ _____
Attorney(s) for child(ren). (Please specify if each child is represented by a different attorney.)
☐ _____
☐ _____

2. ☐ _____
GAL(s)/Investigator(s) (Please indicate if a GAL has been appointed to represent a specific child.)
☐ _____
☐ _____

3. ☐ _____
Attorney(s) for mother.
☐ _____

4. ☐ _____
Attorney(s) for father

(Fill Out Below If Applicable)

I, _____ attorney for D.S.S. or its agent have ascertained from the above checked off attorney(s) and guardian(s) ad litem/investigators a willingness to accept an appointment from the court to represent the same party should the court elect to make such an appointment.

_____
(Signature)

READ BEFORE COMPLETING AFFIDAVIT

A. WHAT IS AN "AFFIDAVIT DISCLOSING CARE OR CUSTODY PROCEDINGS"?

It is a document signed under the penalties of perjury which lists information required by Trial Court Rule IV concerning the child(ren) involved in a care or custody proceeding.

B. WHO MUST FILE THIS AFFIDAVIT?

The party to a petition (including a modification petition) or complaint involving the care, custody visitation, or change of name of a child pursuant to G.L. c. 119 (except delinquency actions under G.L. c. 119), G.L. c. 201, G.L. c. 207, G.L. c. 208, G.L. c. 209, G.L. c. 209A, G.L. c. 209C, G.L. c. 210, or any other provision of law concerning the care or custody of a child must file this affidavit.

This affidavit **must be signed by the party**, unless the party is under 18 years of age or has been adjudged incompetent, in which case the attorney of record must sign this affidavit on behalf of the juvenile or incompetent party.

C. WHEN MUST THIS AFFIDAVIT BE FILED?

The person filing the petition or complaint must file this affidavit at the time of filing, and the other party must file this affidavit with the first pleading.

This affidavit should be filed upon issuance of a CHINS petition pursuant to G.L. c. 119, not upon application for such a petition.

This affidavit need not be filed if the petition or complaint is for **support only.**

D. WHERE MUST THIS AFFIDAVIT BE FILED?

The completed affidavit must be filed, in person or by mail, with the Clerk-Magistrate or Register of Probate in the court in which this action is being brought.

E. WHEN MUST A REVISED AFFIDAVIT BE FILED?

A revised affidavit must be filed with the Clerk-Magistrate or Register of Probate if new information is discovered subsequent to the filing of this affidavit.

F. WHAT MUST BE FILED AS PART OF THIS AFFIDAVIT?

Certified copies of each pleading and of any determination entered in a foreign country or in a state other than Massachusetts must be filed with this affidavit unless these documents are on file with the court in this case, or an extension has been granted by the court for filing these documents.

INSTRUCTIONS FOR COMPLETING AFFIDAVIT

When completing this affidavit if additional space is needed for any of the sections, attach a separate sheet which includes your name (printed), the docket number and the sections to which you are referring. You must also sign and date the sheet.

The party filing this affidavit **must** complete the section entitled "Name of Case" and indicate the Court Department and Division in which the case is being brought. The docket number should also be listed, if known.

DO NOT COMPLETE SECTIONS 2, 3, 4, 8 AND 10 IF THIS AFFIDAVIT IS BEING FILED WITH A PETITION FOR ADOPTION.

Section 1 You must print your first and last name. If this affidavit is being filed by an attorney on behalf of an incompetent person or juvenile, the name of the party on whose behalf this affidavit is being completed must be listed.

Section 2 List the names of all child(ren) involved in this care or custody proceeding. All future references to the child(ren) listed in this section should be with the letter in front of the child's name (e.g. If John Smith is listed next to the letter A, all future references to John Smith will be as Child A).

Section 3 Check the box if this section applies to you. If this box is checked, **do not complete Sections 4 and 5.** You must complete Sections 10 and 11 on the reverse side of page 1.

Sections 4 & 5 List the present and all prior addresses during the last two years of the above-named child(ren) and your present address. If legal custody of a child has been awarded to a social service agency, list the name and address of the agency with legal custody.

Section 6 Check the appropriate boxes.

Section 7 List all pending or concluded proceedings which you have participated in or know of involving the care or custody of the child(ren) named in this affidavit. Indicate the letter of the child; the court in which the case was heard; the docket number; the person(s) to whom custody was awarded and the date of the award; and the nature of your participation in the proceeding by listing "W" for witness, "P" for party, "O" for other or "N" for none. If specific information required in this section is not known, you or your attorney should contact the court where the case was heard to obtain such information. **In the case of a petition for adoption, list all information except the person(s) to whom custody was awarded, the date of the award and the nature of your participation. Under the heading "Status of Case", indicate the type of case.**

Section 8 List the name(s) and current residential address(es), if known, otherwise the last known address(es) of parties to care or custody proceedings or persons claiming a legal right to the above-named child(ren) during the last two years. Do not include yourself.

Section 9 Check this box if this affidavit discloses the adoption of a child and you are requesting the court to impound this affidavit. If this provision is applicable, you should contact the Clerk-Magistrate or Register of Probate for assistance concerning the appropriate motion to be filed.

Sections 10 & 11 **COMPLETE ONLY IF YOU CHECKED THE BOX IN SECTION 3.**
List the present and all prior addresses during the last two years of the child(ren) listed in Section 2 of this affidavit and your present address. If legal custody of a child has been awarded to a social service agency, list the name and address of the agency with legal custody.

Section 12 List the attorneys and guardians ad litem/investigators previously appointed in the pending actions listed in Section 7.

Signature The party listed in Section 1 must date and sign this affidavit except for an incompetent person or juvenile, in which case the attorney of record on behalf of the juvenile or incompetent party must date and sign this affidavit and print his/her name and address.

THIS AFFIDAVIT MUST BE FILED WITH THE COURT AND A COPY FURNISHED BY THE PARTY FILING IT TO ALL OTHER PARTIES TO THE ACTION.

NOTICE TO DEFENDANT IN RESTRAINING ORDER CASE	DOCKET NO.	Trial Court of Massachusetts District Court Department

DEFENDANT'S DOB	DEFENDANT'S NAME	COURT DIVISION

NOTICE TO DEFENDANT

IN

RESTRAINING ORDER CASE

This notice accompanies a (temporary/one year/other: _____) restraining order issued from this court on _____.
DATE

(The court has scheduled a hearing in this case for _____.)
DATE

Unless and until the order is changed BY THE COURT, you must follow it exactly. No one else, including the plaintiff in the case, has the power to give you permission to violate the order.

Violating the order is a CRIME, subjecting you to immediate warrantless arrest and punishment by imprisonment for up to two and a half years in the House of Correction or a fine of up to $5,000, or both.

DATE	NAME OF JUDGE OR CLERK-MAGISTRATE OF ISSUING COURT
DATE	JUDICIAL OFFICER'S SIGNATURE x _____

PLAINTIFF'S MOTION TO VACATE RESTRAINING ORDER	DOCKET NO.	**Trial Court of Massachusetts** District Court Department
PLAINTIFF'S NAME	DEFENDANT'S NAME	COURT DIVISION

PLAINTIFF'S MOTION

TO

VACATE RESTRAINING ORDER

Now comes the plaintiff _____ in the above-entitled matter, and respectfully requests the court to vacate the restraining order issued pursuant to Chapter 209A.

For reason therefor, the plaintiff states:

The plaintiff also is aware of the following information: I understand that I can return to the court at any time to seek a new protective order, if the defendant harms or attempts to harm me physically; or places me in fear of imminent serious physical harm; or, by using force, threat or duress, makes me engage in sexual relations unwillingly.

DATE	NAME OF PLAINTIFF:
DATE	SIGNATURE OF PLAINTIFF **x** _____